

favorable comment from all parts of the country. His speech against the recall of judicial decisions was a potent factor in defeating the admission of Arizona as a State while this objectionable feature remained in her constitution. He also took a leading part in the fight for the abrogation of the treaty with Russia, because of her persecution of the Jews, and as a token of their esteem he was presented last year with a gift by his Jewish friends in Charleston.

There remains another side of his character which perhaps contributed more largely than anything else to his great success in life. In addition to high ideals he possessed in an unusual degree the happy faculty of making friends. His was a personality so winning and magnetic that he seemed to make friends without effort, and the friendships once acquired his charm of manner and lofty character always retained. Loyalty to his friends was one of the guiding principles of his life. He was an optimist in friendship, looking for the good in people and trusting them as long as they would let him. To such a person the world acts as a mirror, giving back always the kind of treatment accorded it. As a result GEORGE LEGARE numbered his friends almost by his acquaintances, and if, as the proverb says, "There are as many uses for friendship as for fire and water," then GEORGE LEGARE possessed one of the essential things of life in an unusual degree. He was the most generally popular man the city of Charleston has produced since the Civil War, and of all the Members of this House there was probably no one better loved than he. The sense of loss felt at his passing is general and very great. In the termination of such a life as his we can not but feel great sorrow; yet if we believe with the poet, that "The living are the only dead; the dead live nevertheless to die," we know that it is not for the dead themselves we sorrow, but for the vacant place their going makes with those who are left behind. I can not better sum up the life lived by GEORGE LEGARE than in the words of William II of Germany:

To be strong in pain; not to desire what is unattainable or worthless; to be content with the day as it comes; to seek the good in everything and to have joy in nature and men, even as they are; for a thousand bitter hours to console one's self with one that is beautiful, and in doing and putting forth effort always to give one's best, even if it brings no thanks. He who learns that and can do that is a happy man, a free man, a proud man; his life will always be beautiful.

Mr. Speaker, I ask unanimous consent that all Members of the House who wish so to do may have leave to print remarks in the Record relative to the life, character, and public services of the late GEORGE S. LEGARE.

The SPEAKER pro tempore. Is there objection?

There was no objection.

Mr. FINLEY resumed the chair as Speaker pro tempore.

#### ADJOURNMENT.

The SPEAKER pro tempore. In accordance with the resolution previously adopted, the Chair declares the House adjourned until 10.30 o'clock to-morrow morning.

Accordingly (at 8 o'clock and 28 minutes p. m.) the House adjourned until to-morrow, Monday, February 24, 1913, at 10.30 o'clock a. m.

### SENATE.

Monday, February 24, 1913.

The Senate met at 10 o'clock a. m.

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

Mr. GALLINGER took the chair as President pro tempore under the previous order of the Senate.

The Secretary proceeded to read the Journal of the proceedings of Saturday last, when, on request of Mr. CULLOM and by unanimous consent, the further reading was dispensed with and the Journal was approved.

#### PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented a joint resolution passed by the Legislature of the State of Nevada, which was referred to the Committee on Commerce and ordered to be printed in the Record, as follows:

Senate and assembly joint resolution memorializing Congress.

Whereas there is pending in Congress a House of Representatives bill known as H. R. 25518, which provides for the construction of an efficient and practical fishway in the Derby Dam, which is owned and controlled by the United States Reclamation Service, and in the Truckee River, Washoe County, and appropriating money for the construction thereof, and introduced by Mr. RAKER on June 27, 1912: Therefore be it

Resolved, That the people of this State, through their representatives in this the twenty-sixth session of the legislature, most heartily recommend the passage of the bill, to the end that effective provision may be had for the passage of the trout of this stream and those of Pyramid Lake during their spawning season, to enable them to reach their spawning beds in the upper stretches of the Truckee River for the purpose of reproduction; and be it further

Resolved, That the secretary of state is instructed to at once forward copies of this memorial to the President of the United States, the President of the Senate, and Speaker of the House of Representa-

tives, and to our United States Senators and Representatives in Congress.

Approved February 17, 1913.

STATE OF NEVADA, Department of State:

I, George Brodigan, the duly elected, qualified, and acting secretary of state of the State of Nevada, do hereby certify that the foregoing is a true, full, and correct copy of the original senate and assembly joint resolution, approved February 17, 1913, now on file and of record in this office.

In witness whereof I have hereunto set my hand and affixed the great seal of State at my office in Carson City, Nev., this 18th day of February, A. D. 1913.

[SEAL.]

GEORGE BRODIGAN,

Secretary of State.

By J. W. LEGATE,

Deputy.

The PRESIDENT pro tempore presented a joint resolution passed by the Legislature of the State of Oregon, which was referred to the Committee on Public Lands and ordered to be printed in the Record, as follows:

UNITED STATES OF AMERICA,  
STATE OF OREGON.

Office of the Secretary of State.

I, Ben W. Olcott, secretary of state of the State of Oregon, and custodian of the seal of said State, do hereby certify that I have carefully compared the annexed copy of senate joint memorial No. 12 with the original thereof filed in the office of the secretary of state of the State of Oregon on the 14th day of February, 1913, and that the same is a full, true, and complete transcript therefrom and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed hereto the seal of the State of Oregon.

Done at the capitol at Salem, Oreg., this 15th day of February, A. D. 1913.

[SEAL.]

BEN W. OLCOTT,

Secretary of State.

To the honorable Senate and House of Representatives of the United States of America in Congress assembled:

GENTLEMEN: Your memorialists, the Legislative Assembly of the State of Oregon, respectfully urge that House bill No. 2981, introduced by Mr. LAFFERTY April 10, 1911, and having for its purpose the creation of Saddle Mountain National Park, be enacted into law.

Saddle Mountain is the natural water reserve for a vast extent of the Oregon coast, which is rapidly developing into a continuous beach resort, extending from the mouth of the Columbia River south to Tillamook Head, a distance of more than 20 miles. These beach resorts obtain their water supply from the streams that rise on the western slope of Saddle Mountain. The preservation of the water supply of this territory by means of creating Saddle Mountain National Park is of vital importance to the State of Oregon.

The lands within the boundaries of this proposed public park are described as follows: The south half and the northeast quarter of section 7, the west half and the southeast quarter of section 8, the southwest quarter of section 9, the northwest quarter of section 16, and the north halves of sections 17 and 18, in township 5 north, range 8 west; and the southwest quarter of section 27, the southeast quarter of section 28, the north half of section 33, the northwest quarter of section 34, the northwest quarter and the southwest quarter of section 28, and the northeast quarter and the southeast quarter of section 29, in township 6 north, range 8 west of the Willamette meridian.

Adopted by the house February 11, 1913.

C. N. MCARTHUR,

Speaker of the House.

Adopted by the senate February 8, 1913.

DAN J. MALARKY,

President of the Senate.

[Indorsed: Senate joint memorial No. 12, by Senator Lester. J. W. Cochran, chief clerk. Filed Feb. 14, 1913, at 5.45 o'clock p. m. Ben W. Olcott, secretary of state.]

Mr. CULLOM presented memorials of sundry citizens of Blufford, Marlow, and Opdyke, all in the State of Illinois, remonstrating against the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which were ordered to lie on the table.

Mr. GALLINGER presented a petition of Samuel Ashley Chapter, Daughters of the American Revolution, of Claremont, N. H., praying for the enactment of legislation to prohibit the desecration of the flag of the United States, which was referred to the Committee on the Judiciary.

Mr. TOWNSEND presented memorials of sundry citizens of Michigan, remonstrating against the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which were ordered to lie on the table.

Mr. SMITH of Arizona. I present a joint memorial adopted by the Legislature of the State of Arizona relative to an appropriation of \$25,000 for the construction of a bridge across the Colorado River at Yuma, Ariz. I ask that the memorial be printed in the Record and be referred to the Committee on Commerce.

There being no objection, the memorial was referred to the Committee on Commerce and ordered to be printed in the Record, as follows:

Memorial to the Senate and House of Representatives of the United States of America in Congress assembled.

Your memorialists, the First Legislature of the State of Arizona, in session convened, respectfully represent:

Whereas an urgent necessity exists for means, in addition to railroad transportation, whereby traffic can be carried on across the Colorado River between the States of Arizona and California, not only connecting localities within the two States, but also bridging an annoying and detrimental gap in one of the few feasible all-around-the-year routes between the Pacific coast and the rest of the United States; and

Whereas the State of Arizona, exhibiting its good faith and its desire to promote this advantage not merely to its own people and the people of the State of California, but to the people of the whole country, particularly at this time, when the citizens of other States are making plans to attend California's historic expositions in 1915, traveling by their own modes of conveyance, has enacted a law appropriating the sum of \$25,000 to pay one-third the estimated cost of a bridge across the Colorado River from Penitentiary Hill, in the town of Yuma, State of Arizona, to School Hill, on the Yuma Indian Reservation, in the State of California, contingent upon like appropriations by the State of California and the Congress of the United States for such a bridge; and

Whereas the Legislature of the State of Arizona has given notice to the Legislature of the State of California of the appropriation by the State of Arizona for this purpose, and has memorialized said Legislature to join with the State of Arizona and the Government of the United States of America in the said undertaking: Now therefore

The Legislature of the State of Arizona, in session convened, respectfully pray and urge the Congress of the United States to make an appropriation of \$25,000 for this purpose.

Passed the senate unanimously February 13, 1913.

W. G. CUNIFF,  
President of the Senate.

Passed the house on the 17th day of February, 1913, by a vote of 81 ayes, 1 no, 3 absent.

H. H. LINNEY,  
Speaker of the House of Representatives.

Mr. SMITH of Arizona presented a memorial of sundry citizens of Phoenix, Ariz., remonstrating against the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which was ordered to lie on the table.

Mr. LODGE presented a petition of the Boston Section, Council of Jewish Women of Massachusetts, praying that an appropriation be made for the enforcement of the white-slave law, which was referred to the Committee on Appropriations.

He also presented a petition of members of the Massachusetts Peace Society, praying for the repeal of the provision exempting coastwise vessels from the payment of tolls in the Panama Canal, which was ordered to lie on the table.

#### REPORTS OF COMMITTEES.

Mr. McCUMBER, from the Committee on Pensions, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

H. R. 28746. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and certain soldiers and sailors of wars other than the Civil War and to widows of such soldiers and sailors (Rept. No. 1292); and

H. R. 28672. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and certain soldiers and sailors of wars other than the Civil War and to widows of such soldiers and sailors (Rept. No. 1293).

Mr. CHAMBERLAIN, from the Committee on Military Affairs, to which was referred the bill (S. 4662) for the relief of Charles Richter, reported it with an amendment and submitted a report (No. 1294) thereon.

Mr. WILLIAMS, from the Committee on Military Affairs, to which was referred the following bills, reported them each with an amendment and submitted reports thereon:

S. 6775. A bill to grant an honorable discharge to David Steers (Rept. No. 1296); and

H. R. 16993. An act for the relief of Mathew T. Fuller (Rept. No. 1295).

Mr. WILLIAMS, from the Committee on Military Affairs, to which was referred the bill (S. 5056) to remove the charge of desertion from the military record of the late David S. Merwin, submitted an adverse report (No. 1297) thereon, which was agreed to, and the bill was postponed indefinitely.

Mr. BRADLEY, from the Committee on Pensions, submitted a report (No. 1298) accompanied by a bill (S. 8576) granting pensions and increase of pensions to certain soldiers and sailors of the Civil War and certain widows and dependent relatives of such soldiers and sailors, the bill being a substitute for the following Senate bills heretofore referred to that committee:

S. 7091. J. N. Culton.

S. 7222. Hiram Lay.

S. 7261. William L. Brown.

S. 7284. Emanuel Sandusky.

S. 7285. Harvey Key.

S. 7399. William F. Niederritter.

S. 8081. Mary J. Swift.

#### BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. JONES:

A bill (S. 8575) to authorize the town of Okanogan, Wash., to construct and maintain a footbridge across the Okanogan River; to the Committee on Commerce.

By Mr. JOHNSON of Maine:

A bill (S. 8577) authorizing the construction of a railroad bridge across the St. John River, between the town of Van Buren, Me., and the parish of St. Leonards, Province of New Brunswick, Dominion of Canada; to the Committee on Commerce.

#### AMENDMENTS TO APPROPRIATION BILLS.

Mr. WORKS (for Mr. CLAPP) submitted an amendment proposing to appropriate \$51,520 to pay for additional books authorized to be furnished under section 229 of the act to codify, revise, and amend the laws relating to the judiciary, intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on the Judiciary and ordered to be printed.

Mr. CLARKE of Arkansas submitted an amendment proposing to appropriate \$237,840 for labor and material required in the installation of a drainage system in the city of Hot Springs to care for storm waters from the mountains of the Hot Springs Reservation, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. SHEPPARD submitted an amendment authorizing the Secretary of War to use for replacing and repairing the electric light and telephone cable and the water main between the city of Galveston, Tex., and the immigration station on Pelican Spit, the unexpended balances of the appropriations for construction of water main to supply water to the immigration station at Galveston, Tex., etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. CULLOM. I submit an amendment proposing to appropriate \$2,000 for the purchase of two portraits, one of the late Senator Justin S. Morrill, of Vermont, and the other of the late Senator John Tyler Morgan, of Alabama, intended to be proposed by me to the sundry civil appropriation bill. I hope the purchases will be made. I move that the amendment and accompanying papers be referred to the Committee on Appropriations and printed.

The motion was agreed to.

Mr. SMOOT submitted an amendment proposing that out of any money appropriated for the transportation of American citizens fleeing from threatened danger in the Republic of Mexico there shall be paid by the Secretary of War to the Mexican Northwestern Railway Co. the sum of \$7,245, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

#### WITHDRAWAL OF PAPERS—JOSEPHINE F. VIOLLAND.

On motion of Mr. WORKS (for Mr. CLAPP), it was

Ordered, That the papers accompanying the bill S. 8841, Sixtieth Congress, second session, for the relief of Josephine F. Violland, be withdrawn from the files of the Senate, no adverse report having been made thereon.

#### DIPLOMATIC AND CONSULAR APPROPRIATION BILL.

The PRESIDENT pro tempore laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 28607) making appropriations for the Diplomatic and Consular Service for the fiscal year ending June 30, 1914, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. CURTIS. I move that the Senate insist upon its amendments, agree to the conference asked for by the House, the conferees on the part of the Senate to be appointed by the Chair.

The motion was agreed to; and the President pro tempore appointed Mr. CURTIS, Mr. SMOOT, and Mr. SMITH of Maryland conferees on the part of the Senate.

Mr. SMOOT subsequently said: Mr. President, this morning I was appointed one of the conferees on the diplomatic and consular appropriation bill. I ask to be relieved from that service. The Senator from Kansas [Mr. CURTIS] will suggest another name.

Mr. CURTIS. I suggest that the Senator from Pennsylvania [Mr. OLIVER] be appointed.

The PRESIDENT pro tempore. The Senator from Utah will be relieved, at his own request, as a conferee, and the Senator from Pennsylvania [Mr. OLIVER] will be appointed in his place.

#### CALLING OF THE ROLL.

Mr. CULLOM. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from Illinois suggests the absence of a quorum. The roll will be called.

The Secretary called the roll, and the following Senators answered to their names:

|             |                |             |              |
|-------------|----------------|-------------|--------------|
| Bankhead    | Culberson      | Lodge       | Root         |
| Borah       | Cullom         | McCumber    | Sheppard     |
| Bourne      | Foster         | McLean      | Simmons      |
| Bradley     | Gallinger      | Martin, Va. | Smith, Mich. |
| Brady       | Gamble         | Myers       | Smith, S. C. |
| Bristow     | Gronna         | Nelson      | Smoot        |
| Bryan       | Jackson        | Newlands    | Stone        |
| Burnham     | Johnson, Me.   | O'Gorman    | Swanson      |
| Burton      | Johnston, Ala. | Oliver      | Thomas       |
| Catron      | Jones          | Overman     | Tillman      |
| Chamberlain | Kavanaugh      | Page        | Webb         |
| Chapp       | Kenyon         | Percy       | Wetmore      |
| Crawford    | Lea            | Perkins     | Works        |

The PRESIDING OFFICER (Mr. McCUMBER in the chair). Fifty-two Senators have answered to their names. A quorum is present.

#### RIVER AND HARBOR BILL.

Mr. NELSON. I move that the Senate proceed to the consideration of House bill 28180, the river and harbor bill. After the motion is put I will yield for morning business.

The PRESIDING OFFICER. The Senator from Minnesota moves that the Senate proceed to the consideration of House bill 28180, known as the river and harbor bill. Is there objection? The Chair hears none, and it will be so ordered.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 28180) making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, the pending question being on the amendment of Mr. NEWLANDS, after line 10, page 65, to insert the following as a new section:

SEC. 3. That for the regulation and control of the flow of navigable rivers in aid of interstate commerce, and as a means to that end for the storage of flood waters in the watershed of such navigable rivers, including the beneficial use and control of such flood waters, in the maintenance so far as practicable of a standard flow for navigation, the reclamation of arid and swamp lands, and the development of water power; and for the protection of watersheds from denudation, erosion, and from forest fires, and for the cooperation of Government services and bureaus with each other and with States, municipalities, and other local agencies, in plans and works having in view such river regulation and control, the sum of \$5,000,000 annually for each of the years following the 1st day of July, 1913, and up to the date of the completion and opening to commerce of the Panama Canal, and thereafter the sum of \$50,000,000 annually for each of the 10 years following the completion of the Panama Canal, is hereby reserved, set aside, and appropriated and made available until expended, out of any moneys not otherwise appropriated, as a special fund in the Treasury to be known as the river-regulation fund.

That of the said river-regulation fund, until otherwise directed by law, one-tenth thereof shall be apportioned to the rivers on the Atlantic coast, one-tenth thereof to the rivers on the Gulf coast outside of the Mississippi River, one-fifth thereof to the Mississippi River from St. Louis to the Gulf, one-tenth thereof to the Missouri River and its tributaries, one-tenth thereof to the Ohio River and its tributaries, one-tenth thereof to the upper Mississippi River above St. Louis and its tributaries, one-tenth thereof to the Sacramento and San Joaquin Rivers and their tributaries in California, one-tenth thereof to the Columbia and Snake Rivers and their tributaries in Oregon, Washington, and Idaho, and one-tenth thereof in the connection of the Great Lakes with the Ohio and Mississippi Rivers.

That a board is hereby created, to be known as the Board of River Regulation, consisting of the Chief of Engineers of the United States Army, the chairman of the Panama Commission, the chairman of the Board of Review of the Engineer Corps of the Army, the chairman of the Mississippi River Commission, the Director of the United States Geological Survey, the Chief of the Weather Bureau, the Forester of the Department of Agriculture, the Director of the Reclamation Service, the Chief of the Drainage Division of the Department of Agriculture, the Secretary of the Smithsonian Institution, one hydraulic engineer, one sanitary engineer, and one electrical engineer; the last three to be appointed by the President and to hold office at his pleasure, and each to receive an annual compensation of \$7,500, payable out of the river-regulation fund.

The Chief of Engineers shall be the chairman of such board, and the secretary shall be annually elected by the board from its members.

That the functions of said board shall be to investigate and obtain full information concerning all matters involved in or specifically related to the objects set forth in this section, and for such purpose is authorized to expend a suitable and necessary proportion of the moneys therein appropriated; but said board shall not expend or incur liability for the expenditure of any money for the construction or execution of plans or projects without the specific approval of Congress, as hereinafter set forth; that said board is hereby authorized and directed to enlist through the President the services of any Federal department or bureau the statutory authority of which may involve investigations or constructive work that is necessary or desirable in the comprehensive performance of the objects set forth in this section, and to bring into cooperation and to harmonize and unify the work of said departments or bureaus as may be necessary to provide against duplication or unwarranted or incomplete work with respect to the objects herein provided; and that said board is authorized to defray the expenses of such investigations or assistance to the extent of the ultimate cost thereof to said departments or bureaus through a transfer of equivalent proportions of the appropriation herein provided.

That the board shall develop, formulate, and prepare plans for the accomplishment of the purposes herein provided, and shall report the same to Congress annually and at such other times as may be required; and whenever the recommendations or any parts thereof in said report shall receive the approval of Congress the said board shall proceed to construct and execute the same in accordance with the plans so approved: *Provided*, That the provisions of this section shall be so administered as in no way to supersede or conflict with any specific provisions which Congress shall from time to time make by way of appropriations other than such as are made by this act for work and improvements to

be performed or maintained by the Corps of Engineers, United States Army, but that all work prescribed under this section shall be supplemental to and coordinated with the work as specifically prescribed by Congress in other acts.

That the board shall in all cases where possible and practicable encourage, promote, and endeavor to secure the cooperation of State and local government bodies, public and quasi public corporations, private associations, and persons in carrying out the purposes and objects of this act, including the securing of the financial cooperation of said parties; that it shall negotiate and arrange plans for the apportionment of work, costs, and benefits, and to secure the agreement and consent of said parties, contingent upon the final approval of same by Congress as herein provided, which approval and consent may include the acceptance and use of any funds or property donated or subscribed or in any way provided for cooperative work; but no moneys shall be expended under any arrangement for cooperation approved by Congress until the funds to be provided by the parties to such arrangement shall have been made available for disbursement.

[Mr. NELSON yielded for the transaction of certain routine business, which appears under the appropriate headings.]

Mr. LEA. Mr. President, I rise to a parliamentary inquiry. The PRESIDING OFFICER pro tempore. The Senator from Tennessee will state it.

Mr. LEA. Are we considering morning business?

The PRESIDING OFFICER pro tempore. The Chair so holds.

Mr. LEA. Then what was the motion of the Senator from Minnesota?

The PRESIDING OFFICER pro tempore. He made a motion to proceed to the consideration of the river and harbor bill, and it was agreed to.

Mr. LODGE. The Senator from Minnesota moved to proceed to the consideration of the river and harbor bill. That motion was agreed to.

Mr. LEA. That was not a unanimous consent under the previous unanimous-consent agreement?

Mr. LODGE. Not at all.

Mr. LEA. It was not under the first agreement, that immediately upon the conclusion of the morning business the Senate will proceed to the consideration of House bill 22503, the bill providing for the physical valuation of railroads, and so forth.

Mr. NELSON. That is subject to appropriation bills.

Mr. LODGE. It is subject to appropriation bills and conference reports.

The PRESIDING OFFICER pro tempore. The Chair so understands.

Mr. SMITH of South Carolina. I should like to make an inquiry. After the consideration of the pending matter, will we then have an opportunity under the unanimous-consent agreement to recur to morning business after the close of the morning hour for the day?

Mr. NELSON. I suggest that after we have disposed of the river and harbor bill we shall then take up morning business for a few moments.

Mr. SMITH of South Carolina. The reason why I make the request is that I wish to make a motion, and if the Senator from Minnesota will allow me, I will serve notice now that to-morrow I shall move to discharge the Judiciary Committee from the further consideration of the bill (H. R. 56) to prohibit interference with commerce among the States and Territories and with foreign nations, and to remove obstructions thereto, and to prohibit the transmission of certain messages by telegraph, telephone, cable, or other means of communication between States and Territories and foreign nations, and I shall submit some remarks thereon.

#### PACKAGES UNDER FOOD AND DRUGS ACT.

Mr. OLIVER. I ask the Chair to lay before the Senate the action of the House of Representatives on House bill 22526.

The PRESIDING OFFICER pro tempore laid before the Senate the action of the House of Representatives on the bill (H. R. 22526) to amend section 8 of an act entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes," approved June 30, 1906, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. OLIVER. I move that the Senate insist on its amendments, and agree to the conference asked by the House, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the President pro tempore appointed Mr. OLIVER, Mr. LA FOLLETTE, and Mr. SMITH of South Carolina conferees on the part of the Senate.

#### RIVER AND HARBOR BILL.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 28180) making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes.

The PRESIDING OFFICER pro tempore. The question is on the amendment submitted by the Senator from Nevada [Mr. NEWLANDS].

Mr. LODGE. Mr. President, on that amendment I desire to make a point of order. The amendment involves a policy of great magnitude and commits the Government to an expenditure of some \$500,000,000, which seems to me to be a large amount, although I may appear to be a person of contracted ideas in saying so. Certainly it is general legislation, pure and simple, and I make the point of order against it.

The PRESIDENT pro tempore. The Senator from Massachusetts makes the point of order that the amendment proposed by the Senator from Nevada is general legislation. The Chair sustains the point of order.

Mr. NEWLANDS. Mr. President, with reference to what amendment was that made?

The PRESIDENT pro tempore. The Senator's amendment, which was submitted on Saturday last.

Mr. NEWLANDS. I did not hear the motion of the Senator from Massachusetts. May I inquire what it was?

The PRESIDENT pro tempore. The Senator from Massachusetts made a point of order that the amendment is general legislation on an appropriation bill, and the Chair sustains the point of order.

Mr. NEWLANDS. Mr. President, I shall speak generally regarding the pending bill, in continuation of my remarks of last Saturday.

The debate which progressed between the representatives of the three lower States on the Mississippi River—Louisiana, Mississippi, and Arkansas—and the representatives of the upper States—Illinois, Iowa, and Missouri—indicates how inefficient is the system of river development under which we are now and have been for years working.

What was that contention? The representatives of the lower Mississippi States succeeded some years ago in securing the organization of the Mississippi River Commission. That commission was composed of three engineers of the Engineer Corps of the Army, the Chief of the Coast and Geodetic Survey, a lawyer and two civil engineers appointed by the President, thus furnishing an example of the coordination of services called for by the amendment for which I have been contending and called for by the river-regulation bill, which I have been urging in Congress ever since 1907.

The representatives from the lower Mississippi then realized the necessity of relying not simply on the Engineer Corps of the Army but of bringing in cooperation with that corps the Chief of the Coast and Geodetic Survey, having jurisdiction over a part of the inland waterways of the country, and also the cooperation from the outside of noted civil engineers and the aid of a lawyer of distinction.

How did they secure the creation of that Mississippi River Commission? By making it a commission for the lower Mississippi alone? No. The act creating the Mississippi River Commission is broad and comprehensive in its terms, and embraces the entire Mississippi River from source to mouth, including, as I believe, if it is properly and liberally construed, all the tributaries of the Mississippi River. Even at that time there seems to have been some conception of the view now generally entertained upon this subject—that a river from source to mouth, with all its tributaries, is to be treated as a unit. So the Mississippi River Commission was created with the assent and by the cooperation of all the representatives from the States of the Mississippi Valley, and in its very terms its operations were to be as broad and comprehensive as are the reaches of that vast river and all its tributaries.

How has it been reduced by practical administration? By practical administration, through the contracting powers of a River and Harbor Committee in the other House, controlled for many years by one of the ablest men in that body in the line of the contraction of its operations, instead of the expansion of its operations—a gentleman now a distinguished Member of this body; a gentleman whose views are broad, but whose action is narrow in actual operation and work—the operations under that Mississippi River Commission were practically contracted at first to a region from Cairo to the mouth of the river, a stretch of only a thousand miles, when the entire Mississippi River, with all its tributaries, embraces a distance, I believe, of between ten and fifteen thousand miles.

So we found that, whilst the original bill was broad in its terms, embracing, under a liberal construction, the entire Mississippi River with its tributaries as a unit, the practical operation and administration was confined to the lower reaches of the river, 1,000 miles in length. Even there insufficient appropriations were made, \$3,000,000 a year, which it was expected in a period of 20 years would secure the entire protection of the region on both sides of that river from destructive overflows and secure the maintenance of its channel.

Think of the smallness of the operation under that act! That region had been the victim for years of devastating floods. It was reasonable to expect that those floods would perennially recur; those floods inflicting enormous damage upon the cultivable area, reaching from \$10,000,000 to \$15,000,000 in a given year. Instead of Congress, under the inspiration of the River and Harbor Committee of the other House, taking the broad action that would result in the immediate appropriation and application within a short period of time of \$50,000,000 or \$60,000,000, required for the protection of the banks in the way of revetment or protection from overflow in the way of levees, with the cooperation of the States and adjoining districts, Congress took the risk in a single year of destruction from overflow amounting to the entire expenditure contemplated in a period of 20 years; and this the River and Harbor Committee of the House called economy—this confining of its appropriations to \$3,000,000 annually, and subjecting that vast area to the danger of an annual loss of from \$10,000,000 to \$15,000,000! Then they restricted the expenditure to that area.

Were there no other areas that demanded attention? Was not the region between Cairo and Cape Girardeau requiring protection? That actual area of operations under the act was later on extended, but I do not think the amount of the appropriation was very largely increased; it was extended upon the assumption that it was idle to raise the levees below, when between Cairo and Cape Girardeau the banks were unprotected and an overflow extending back of the levees would sweep over the entire intermediate country between that region and the Passes, including Arkansas, Mississippi, and Louisiana, and thus force the way of the Mississippi through devious passes and bypaths to the Gulf, instead of through one deep, well-protected, and well-regulated channel. So they added on the space between Cairo and Cape Girardeau, a space of a few hundred miles; and now when the region above Cape Girardeau, comprising parts of the great, wealthy, and highly populated States of Missouri, Illinois, and Iowa, insist that they have problems of equal importance, problems of the same character, involving not only the regulation of the channel for navigation, but also the maintenance of the river within its banks through bank protection and levee building, the representatives from the States below conduct here a wordy warfare against the claims of their brethren above, and insist that the legislation which the latter propose involves almost a spoliation of the lower region of the river. Finally, this region of several hundred miles above is put off in this bill with a small appropriation, I believe, of \$75,000 or \$100,000.

Mr. PERCY. Two hundred thousand dollars.

Mr. NEWLANDS. Two hundred thousand dollars, with a view to investigation—investigation after a hundred years of experience!

How has it been with the Missouri River? Although the terms of the Mississippi River Commission act, in my judgment, embraced the Missouri as a tributary of the Mississippi, it was thought wise to organize a Missouri River Commission some years ago, and that commission was authorized to proceed by bank revetment and levee protection to control the fitful and eccentric Missouri River, passing for 300 miles between St. Louis and Kansas City through a valley of incomparable richness and alluvial soil, which melts like sugar from the impact of the flood waters and then makes its variable course through that valley, stretching from east to west, to-day diverted north, to-morrow south, the next day so eccentric in its course that the farm 10 miles away from the course of that river to-day may, as the result of flood to-morrow, be absolutely swept away by the invading waters, a vast principality of incomparable wealth and productiveness, if protected.

What was done with the Missouri River Commission? Under the inspiration of the contracted policy—broad in view, but narrow in action—maintained by the River and Harbor Committee of the House of Representatives for so many years and followed by the Commerce Committee of the Senate, after that commission had vindicated the necessity for its existence and the success of its work by revetting the banks on the Missouri River between Jefferson City and the junction of the Missouri with the Mississippi, after they had practically demonstrated for a distance of 60 miles in the most dangerous part of that entire valley the absolute success of the revetment system—which consists of weaving willow mats and then sinking them upon the sloping banks by imposing stone upon them, and thus preventing the washing away of the banks in times of flood—after they had proved the absolute success of that system, a success demonstrated to-day after many years of cessation of effort by the entire integrity of the banks of the Missouri River at that point, the operations of the Missouri River Com-

mission were ended by act of Congress and the commission was dissolved.

I do not question the conscientiousness of the Senators and the Representatives who took part in that movement. They were doubtless impelled by motives of economy. Many of them felt, perhaps, that river regulation itself was dead and that all this work ought to be undertaken by the riparian proprietors in the interest of their lands. Many of them evidently thought that it would be practically impossible to control the stream; but if you want to find the hidden and directing force behind the movement, to which Congress unconsciously was obedient, you will find it in the fact that there are four railroads, two on each side of the Missouri River, paralleling its banks from Kansas City down to its junction with the Mississippi River. Those railroads were hostile to the water carrier. The effect of the very existence of a possible water carrier was felt in the diminution of rates. The effect of a successful water carriage could, in their judgment, hardly be measured; and so, reaching out for freight, public opinion was influenced through the newspapers and unconsciously directed to a few mistaken considerations of economy, possibly to a mistaken consideration of the hopelessness of the work, and, finally, to the abandonment of that great enterprise. So the Mississippi River Commission, narrowed in its operation to the region below Cape Girardeau, remained, and the Missouri River Commission went out of existence.

During all that time who were the men who were urging the continuance of the Mississippi River Commission and of the enlargement of its powers and of its operations? The representatives from the Southern States, from the States of the lower Mississippi Valley, almost all of them strict adherents of the doctrine of State rights, almost all of them opposed to the extension of the power of the Federal Government, opposed to the enlargement of those powers, and favoring a strict construction and a narrow exercise of the powers granted. Yet they insisted upon the interstate-commerce power of the Nation being exercised in such a way as effectually to regulate and control that river from Cape Girardeau down. They insisted upon it upon the ground that under the interstate-commerce power the Nation had a clear right to regulate that river, and that it was its clear duty.

What did the exercise of the interstate-commerce power mean? It meant the advancement of transportation. That is what it meant. It did not mean simply the protection of the lands in private ownership adjoining a great river. That might be provided for as incidental to the work of transportation; but the main purpose was transportation, and the only legitimate purpose under which the National Government's powers could be invoked. Yet were the representatives from that region exceedingly solicitous for the advancement of transportation, or was their real purpose the protection of their lands?

They have secured the protection of their lands, inadequate though I admit it to be; but what have they done for the advancement of transportation? I have served on the Commerce Committee, and I know from conversation with some of the members of the committee from that region that some of them are skeptical about ever restoring transportation upon the river. Yet they are voting, nominally under the commerce clause of the Constitution, for the expenditure of these large sums of money, but really reaching their hands into the Federal Treasury for an unconstitutional purpose, if we apply the moneys to that purpose alone. The appropriations are justified, so far as they are national appropriations, only by the advancement of transportation.

What does transportation mean upon the Mississippi River? Does it mean simply the deepening of the channel? Does it mean simply bank protection? Does it mean simply levee protection? Or does it mean the construction of a waterway as they construct a waterway in Germany, with a proper channel, with a proper protection of the stream so as to maintain its flow, and with transfer facilities and terminal facilities and instrumentalities of coordination and cooperation with rail carriage and ocean carriage? Clearly the latter. You might as well develop a railway by scattered developments here and there, the construction of 10 miles here and the construction of 5 miles there, without any connection, or the construction of a railway without terminals, without sidetracks, without station houses, without freight houses, as to construct a waterway and pay attention only to its channel and its banks.

Go to Germany, and you will find every river highly artificialized and canalized, all of them connected with each other by purely artificial channels; and at every station, corresponding to our railway stations, you will find public facilities provided by the Government for the transportation of freight from car to boat, for the storage of freight, and for the economical and

rapid handling of the freight. Not only have they done that, but they have made their water fronts perfect, not only in utility but in beauty, by making them the most attractive parts of their municipalities.

We condemn our water fronts to hideousness, we dedicate them to ugliness and to inutility, whilst Germany creates a union of beauty and utility upon its water fronts, furnishing a lesson to this enterprising country. There they protect the waterway, and they do not allow one public servant to be destroyed and sandbagged by another public servant, as we do in this country. They define the relations between the different waterways in such a way as to promote the interests of both waterways and railways, to make them cooperate as public servants, instead of permitting them to engage in a deadly antagonism and warfare with each other, leading to the destruction of one or the other.

What effort has been made by the representatives from the lower Mississippi, who demand from us action upon this great subject, and who insist that it is the duty of the Nation to protect them from the accustomed flow of waters which nature has for centuries precipitated upon them—what have they done, what have they suggested in the way of a development of transportation, which is the real function of the National Government? I may be mistaken, but I have found no adequate suggestion from the representatives from that region as to the development of the facilities for transportation.

Mr. SHEPPARD. Mr. President, will the Senator yield for a question?

The PRESIDENT pro tempore. Does the Senator from Nevada yield to the Senator from Texas?

Mr. NEWLANDS. Certainly.

Mr. SHEPPARD. Does the Mississippi River Commission act, in the Senator's opinion, embrace all the tributaries of the Mississippi?

Mr. NEWLANDS. In my judgment, it does. It is sufficiently broad in its terms, liberally construed; but it has been narrowed down in its operation to this area on the lower Mississippi. I wish to say that I have no hostility whatever to this enterprise on the lower Mississippi. On the contrary, I have been its consistent friend. A year ago, when the floods broke out, I insisted upon having the appropriation increased from \$3,000,000 to \$10,000,000, instead of a mere \$6,000,000. What I object to is the narrowness of view of the representatives of the lower Mississippi who seek in this bill to narrow the operations of the Mississippi River Commission, and who have refused—or, at all events, have failed—to present to us a vast, connected scheme of river development that will enable the National Government to carry out its true function of developing interstate transportation.

Mr. PERCY. Mr. President, will the Senator yield to me for a moment?

Mr. NEWLANDS. I will.

Mr. PERCY. Unintentionally, I am sure, the remarks of the Senator from Nevada would convey the impression that nothing has been done by the Mississippi River Commission in aid of navigation or for the purpose of benefiting navigation upon the Mississippi River. The last report made by that commission shows that they now maintain a channel of about 9½ feet at low water from Cairo to the Gulf; that at the lowest stage of the Mississippi River boats drawing 9½ feet can pass from Cairo to the Gulf. This is a distinct and marked improvement within the past few years, due solely to the work of that commission.

Again, speaking of terminal and dock facilities, the city of New Orleans provides the best inland dock facilities belonging entirely to the city and used for the benefit of the public of any city in the United States. That more has not been done in the way of providing terminal facilities might very well be attributed to the amount that has been appropriated. There never has been an appropriation made that has been adequate to carry out the aims and the recommendations and the work mapped out by the Mississippi River Commission. The kind of work of which the Senator speaks, in providing adequate facilities up and down that tremendous river, would call for an appropriation for that river alone of almost the amount suggested in his amendment—\$50,000,000—for the rivers of the United States.

Mr. NEWLANDS. Mr. President, I am not complaining of the operations of the Mississippi River Commission within the limited appropriations granted that commission by Congress. I am simply adverting to the fact that the representatives of that entire region in Congress have been devoting themselves in their legislation more to the protection of their lands from overflow than to the promotion of transportation. While New Orleans has done excellent work in the preparation of docks, designed, I believe, not only for river but for ocean traffic, it certainly has not gone far enough; and one has only to sail,

as I have, from Cairo down to New Orleans, and witness the decaying wharves and the inadequate transfer and terminal facilities all along the line, the evident domination over the transportation of that region by the railroad companies, to realize that the powers of the National Government have not been adequately invoked in the carrying out of its great function of promoting interstate transportation.

Mr. KENYON. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Nevada yield to the Senator from Iowa?

Mr. NEWLANDS. Certainly.

Mr. KENYON. I am very much in harmony with the view which is being expressed by the Senator, and I wish there were some way of reaching it. Does the Senator believe that as long as river and harbor bills of this character, constructed as this bill is evidently constructed, are passed by Congress his plan will ever receive serious consideration?

Mr. NEWLANDS. I am afraid not. I am beginning to be afraid not. I have been endeavoring to promote a system that, without interfering at all with the appropriations in the river and harbor bill, would gradually bring about appropriations under the river-regulation bill which I have offered in such a way as to make the work of the old dovetail in with the work of the new and result in an enormous enlargement of the old work. But everywhere I find myself opposed by the representatives of the very region most to be benefited, fearful lest some great policy may be inaugurated that will temporarily imperil the appropriations which they have. I have nothing of that kind in view.

Mr. KENYON. Why is not the quickest way to bring about this result, then, to defeat measures of this kind just as often as they come up?

Mr. NEWLANDS. Mr. President, I am exceedingly reluctant, so far as I am concerned, to take such action. I have served on the Commerce Committee. I do not contend that the expenditures provided for by this bill are improper expenditures. I have no doubt most of them are necessary. I know this expenditure for the Mississippi River is necessary, and ought to be enlarged. I would not, in order to obtain a greater good, temporarily arrest or endanger the work in which these gentlemen are interested. What I protest against is their inertia, their unwillingness to receive new ideas, their unwillingness to take the entire Nation within the scope of their vision. What I complain of is that they view only that distance of a thousand miles from Cairo to the Passes, without taking into consideration the great and broad question of interstate transportation involved in the regulation of interstate commerce.

Mr. KENYON. I wish the Senator, before he closes, would illuminate the subject of just how the river and harbor bill is formulated. I have watched it for a good many years outside of Congress, and have watched the fight in the House of the present Senator from Ohio [Mr. BURTON] against the extravagances of the river and harbor bill.

For instance, here are appropriations for a large number of creeks at different places. Here is an appropriation for Toms River, in New Jersey. How do we ascertain that a thousand dollars is going to help the navigation of Toms River? Here is an appropriation of \$1,500 for Fishing Creek, N. C. How do we determine whether that appropriation is for navigation or to make the creek really what its name implies? I might make the same inquiry as to Swift Creek, in North Carolina, for which \$500 is appropriated. How does the Committee on Commerce ascertain that these appropriations for creeks all over the country are to help navigation?

I wish the Senator would touch upon that matter before he sits down.

Mr. NEWLANDS. I will state to the Senator that the action of the Government upon the questions to which he refers is much more logical than would appear from the terms of these appropriations. It is true that there are appropriations in this bill for creeks upon the Atlantic Coast; but it will be found that many of the so-called creeks are inlets or arms of the sea, and that the appropriation involves the removal of bars or other obstructions to navigation that will enable the coasting trade to reach farther into the interior. I do not say that all of them are justified, but I have no doubt most of them are.

I will state to the Senator the process by which this is done. The initiative is with the Member of Congress, who introduces in the first place a bill for a survey, and has it put upon the river and harbor bill, if he is successful in inducing the committee to believe that it is necessary and proper. That bill involves a preliminary survey by the Engineer Corps of the Army. They report upon it, and if it requires further examination and further expenditure they so report and a further expenditure is made. Before any enterprise is finally entered upon, I believe,

these recommendations go to the board of review in the Engineer Corps of the Army, composed of very highly educated and very capable men, and they pass upon the feasibility of the project and its relation to commerce, and report. If they report favorably, they report the amount necessary in a written report to Congress, and then Congress, if it concludes to act favorably, makes such appropriation as it deems advisable, usually the amount called for by the engineers.

In the improvement of all those methods the country owes the greatest obligation to the Senator from Ohio [Mr. BURTON], who was for many years the chairman of the Rivers and Harbors Committee of the House, and who pursued one uniform and consistent course of insistence that this whole matter should be taken out of the spoils system which had previously existed and be put upon the merit system, the merit of each project being considered by competent engineers. The methods have been vastly improved under the leadership of the Senator from Ohio. My only complaint of the policy which he pursued was that, in my judgment, it was not of sufficient expansion. I can not call it a policy of contraction. The expenditures did steadily decrease, but it was not a policy of sufficient expansion which would take into view all the waterways of the country and make a study of them from source to mouth with a view to making them efficient instrumentalities for transportation, and incidentally making them useful for every purpose to which civilization could put them, thus uniting the related uses with the principal use, the exercise of which alone belonged to Congress, making projects feasible which would otherwise not be feasible, and producing wealth from the development of these uses that would be largely compensatory of the cost in perfecting them.

That is what I complain of. And I complain of the representatives of the lower Mississippi, of their narrowness of view in not realizing that this is a Union of States, that all these rivers are interstate, that their successful development does not depend simply upon the bank protection and levee building of the lower reaches of the Mississippi River, but it depends upon taking a broad and comprehensive view of the entire Mississippi River and its tributaries, and by constructing works in the upper reaches of these rivers and their tributaries useful in a compensatory way for irrigation, for water-power development, and by the raising of levees in the lower reaches with a view to swamp-land reclamation, turning these waters from instrumentalities of destruction into instrumentalities of benefaction. That is the policy, and the policy alone which will make the Mississippi River with all its tributaries an efficient instrumentality of interstate commerce.

I have referred to the contest between the representatives of the lower Mississippi and the representatives of the middle Mississippi River which we have seen. We saw another contest. The construction of levees upon the Arkansas side of the Mississippi River narrowed the stream and necessarily raised the heights of the flood, and as a result the city of Memphis was threatened and much injury was done. An overflow which, according to the Senator from Tennessee [Mr. WEBB], threatened the health of that region, injured its commerce and its production and overflowed valuable portions of the city; and the city of Memphis is to-day considering methods that will save it from these destructive results.

An amendment was offered by the Senator from Tennessee [Mr. WEBB] to this bill, providing for cooperation between the Mississippi River Commission and the authorities of Memphis, so that by joint plans and works the great work, which is of so great benefit to Arkansas, can be conducted in a way that will not be injurious to its neighboring State of Tennessee or its neighboring city of Memphis. A point of order is made on it here by the representative of the neighboring State of Arkansas, and this amendment goes out of the bill at the very time when Memphis is planning and when the exigency of the situation demands cooperation in plans and work.

Mr. President, we of the intermountain region have some interest in this matter. My own State unfortunately has none, because my State is in a great basin bounded on one side by the Rocky Mountains and on the other by the Sierra Nevada Mountains, and having no streams which form tributaries of a great navigable river. That great basin consisting of the State of Nevada and parts of Idaho, Utah, and Arizona has streams, it is true, which take their sources in the mountains, but those streams sink into great lakes in the desert, where the waters serve no use except to satisfy the thirst of the sun. Our problem there is a purely domestic problem of arresting these waters upon the way to these great salt sinks and storing and diverting them over the arid land and making it fruitful of production.

But there are portions of that great trans-Missouri region which are tributary to navigable rivers—the great State of Montana to the Missouri River and its tributaries, the State of Wyoming, the State of Colorado, the States of North and South Dakota, the western parts of Kansas and Nebraska and Oklahoma, all of them semiarid in character, tributary to the Mississippi River system—and they have an interest in the regulation of that river. They do not want to see all their waters go to the Gulf in a rapid and uninterrupted flow, bringing destruction to their neighbors below. They want them diverted above and applied to the public lands of which the Nation is the proprietor in such a way as to prepare them for settlement, and made useful there primarily for irrigation, and, secondarily, for the development of water power, and made useful in such a way that the water percolating through that soil gradually makes its way back to the main or tributary stream and helps to swell the flow of the Mississippi River at the period when it is most needed for navigation—the low-water period, the period of drought.

Then in that intermediate region, humid in character, not requiring the artificial use of water except for the highest purposes of intensified cultivation, they are interested in the development of water power. Right on the Mississippi River between Cairo and St. Louis there is a point, according to the testimony of the eminent engineer, Mr. Cooley, of Chicago, where a dam can be constructed that will develop 800,000 horsepower. Think of it; 800,000 horsepower will produce \$30 annually each horsepower, \$24,000,000 annually. In our country we regard a horsepower as worth between two and three hundred dollars, and the annual revenue from it we rate at from \$30 to \$60.

So we have on the upper Mississippi a proposal in Minnesota embraced in this bill, in a casual and sporadic way, where they propose to put up a structure for navigation which will develop, by a little extra expenditure, an enormous water power—hydroelectric power. Thus this amendment proposes practically what is called for by my river-regulation bill—cooperation between the Nation on the one hand and the State of Minnesota upon the other.

We find here and there throughout our legislation practical instances of this cooperation which I desire to see entered upon as a general scheme of legislation working automatically under adequate appropriation, under the guidance of a board of expert engineers.

Then we have on the Connecticut River another similar project which it is sought to put upon this bill, involving practical cooperation between the State of Connecticut and the United States. Yet is Connecticut the only State that is interested? Not at all. The Connecticut River takes its source in Vermont and New Hampshire, flows through parts of those States, through the State of Massachusetts, and through the State of Connecticut. Every one of those States is just as vitally interested in the full and complete and comprehensive development of the Connecticut River as is the State of Connecticut. Yet so narrow and contracted is our vision that we are embracing only a scheme of cooperation between Connecticut and the United States, leaving out of view entirely the States above.

Three years ago I was invited by the Board of Trade of Springfield to address them upon this question, and I found them immensely interested in the development of the Connecticut River; first, because they have been dependent upon it for the development of water power, and they wanted its development; and secondly, because they had been interested in the question of transportation, and they found in their way to the Sound railroad bridges and dams and various intervening structures, and they wished the Connecticut River opened up as an arm of the sea away up in the interior of Massachusetts, a great manufacturing region. They were insisting that this obstruction should be swept away and that the Nation should regard the Connecticut River as a national asset, so far as commerce is concerned, and as an asset of each one of the States, so far as their domestic uses were concerned. They were insisting upon the union of the powers and the functions and the jurisdictions of all these sovereignties in work that would advance the public interest, each acting within its powers and within its jurisdiction, neither invading the jurisdiction of the other, but engaging in team work as individuals would do when they stand in a similar relation with each other. We find practically that measure doomed to defeat. In the shape in which it passed the Senate it will be vetoed by the President if he remains firm in the conviction which he has hitherto expressed. We have practically doomed that beneficial measure to defeat, a measure of cooperation between the Union and the State, simply because the agency which we have selected to carry out our national uses and the agency which the State of Connecticut has selected to carry out its domestic uses in the development of that

water, acting both as the agent of the Nation and the States, expressed its willingness in this measure to pay a certain portion of its profits into a fund for the improvement of the navigation of the Connecticut River.

The Senators from the southern reaches of the Mississippi who have for years been gaining these appropriations from the National Government, not large enough in my judgment, ostensibly with a view to promoting transportation but really with a view of protecting private lands, vote against and defeat the only practical method of bringing the United States and the State of Connecticut into cooperative action with reference to a structure in that river, designed not only for the purposes of navigation under the jurisdiction of the United States but for the development of water power under the jurisdiction of the State.

Now, I have indicated how we of the intermountain States—though my individual State is not—are interested in the Mississippi Valley. How is it with the Pacific Coast? There we have two or three great drainage areas, the drainage area of the Columbia River with its tributary streams draining through the States of Oregon, Washington, Idaho, and Montana, away into the interior; the waters from the western parts of Idaho and the western part of Montana draining into the Pacific, while those of the eastern parts drain into the Mississippi River and into the Gulf. Ought not those four States to be brought into cooperation with the United States in a system of related development, producing teamwork that will result not only in the promotion of navigation, but in the extension of irrigation and the development of water power and the reclamation of swamp lands? Yet we have no machinery in order to accomplish that.

Then take the next great drainage area, that of the San Francisco Bay, which you see upon the map, the drainage area extending north and south, a distance of nearly 500 miles drained by the Sacramento River running from the north and by the San Joaquin River running from the south, both of them uniting near the Bay of San Francisco, emptying their united waters into that bay, and those waters emptying through a narrow gorge called the Golden Gate into the great ocean of the Pacific, an area of incomparable fertility, an area of incomparable productiveness, the soil and the climate of which promise the most valuable products, the grape, the citrus fruits; all the high-priced products. One-half of that drainage area of 500 miles, the northern half, has sufficient water for cultivation. The lower half has an insufficient supply, a large portion of it being devoted to aridity, and requiring irrigation. There we have those two rivers, capable of being developed to the highest degree as the instrumentalities of transportation, and yet their development delayed in the past by the influence of the great railway interests there. That vast region, 500 miles long and 100 miles wide, composed of this fertile area, is doomed to stunted production—to insufficient production—to absolute aridity in some places.

What does a scientific treatment involve there? A treatment of the arid lands above, a treatment of the swamp lands below, resembling those of the Mississippi Valley, and the development for interstate commerce. Why, of course, the development of that large area involves cooperation of the different sovereignties having jurisdiction, the cooperation of the Nation with the States, and the cooperation of both with private owners, who have simply private interests to serve, and yet the development of which interests would vastly advance the wealth and prosperity of the country. Shall we not provide a system of cooperation between these great interests that will involve not only the development of transportation from one end of the valley to the other, but also involve the development of irrigation of the arid lands and the reclamation of the swamp lands, for recollect that there the floods of these rivers constitute the same destructive agency that they do in the Mississippi Valley and the waters which are stored and developed for irrigation and water power in the course of nature become engines of destruction to the regions below?

Why, Mr. President, not an ounce of water should be permitted to flow into San Francisco Bay and out through the Golden Gate until it has served every useful purpose to which it can be put; and it is perfectly possible, by canals along the foothills, to bring almost every acre of that vast valley, north and south, under the productive influences of an ample water supply, with the accompanying development of water power unexampled throughout the world.

Then as you go down the Pacific coast there is the Colorado River, emptying into the Gulf of California, taking its source in Colorado, flowing through the southern part of Nevada and the northern part of Arizona and through the southern part of California, a river capable of an enormous development of water power, a stream capable of such conservation all along the

line as to develop every civilized use and of development in such a way as to finally promote the conduct of the river over the most fertile alluvial deposits on these vast plains of Arizona and California in the south that are now doomed to aridity.

In some cases, through the strenuous effort of individual proprietors, the waters have been diverted. You have heard of the great Imperial Valley, in the southern part of California, fed by a ditch taken from the Colorado River, and led into Mexico, and then out from Mexico to the north into this Imperial Valley, which at one time was below the level of the sea, and at one time was an arm of the sea. I should probably surprise you if I were to give you the statistics—I have them not at hand—regarding the production of that valley, conducted under conditions of exceptional danger, threatened every year by the enormous floods that come from the north and which ought to be utilized there for both water power and irrigation. Is not that a national problem? Is it not an international problem? For recollect that the contour of the country is such as to absolutely compel the conduct of water, diverted in Arizona for this valley in California, through that portion of Mexico called Lower California, into the southern portion of the State of California.

Mr. SHEPPARD. Mr. President—

The PRESIDING OFFICER (Mr. CURTIS in the chair). Does the Senator from Nevada yield to the Senator from Texas?

Mr. NEWLANDS. I do.

Mr. SHEPPARD. Mr. President, the Red River of the South is also capable of development along the lines suggested by the Senator from Nevada, and especially in Oklahoma and in northern and northwestern Texas.

Mr. NEWLANDS. I have no doubt of it, and yet the Senator from Texas will recall that there was some sarcastic comment the other day regarding the Red River because a certain work has been done upon the Red River for a number of years, and not in such an effectual way as to promote navigation; but the difficulty is that it has been insufficiently done, inadequately done. There has been such construction, as I have already said, that we would have in the case of a railroad where we would build a detached section here and there of 10 or 15 miles.

Mr. SHEPPARD. I will state that \$3,000,000—

The PRESIDING OFFICER. Does the Senator from Nevada yield to the Senator from Texas?

Mr. NEWLANDS. Yes.

Mr. SHEPPARD. Three million dollars have been expended on the river, but the expenditure has been scattered throughout 30 or 40 years and it has been given to the river in dribbles of \$100,000 and \$200,000 each year. Consequently it has been impossible to develop the river in a satisfactory manner, and the stream ought not to be indicted in the eyes of the public because it is not navigable or navigated.

Mr. NEWLANDS. Mr. President, the Senator from Texas is quite right. It is the inadequacy of the system, the inadequacy of the plans, that is responsible for the failure of the promotion of transportation upon that river; yet if this inadequate work goes on, unless the people along those rivers enlarge their vision and take in the whole Union, unless they stop simply asking for individual appropriations for individual projects here and there, after 30 or 40 or 50 years of unsuccessful effort in promoting transportation, the Nation will abandon the work altogether, and thus these very representatives of those regions, holding on tenaciously to the present system of individual projects, will find themselves the victims of that system.

Mr. SHEPPARD. Mr. President—

The PRESIDING OFFICER. Does the Senator from Nevada yield to the Senator from Texas?

Mr. NEWLANDS. I do.

Mr. SHEPPARD. I had rather see the work on the Red River abandoned altogether than to have it continued in the present unsatisfactory and unscientific manner.

Mr. NEWLANDS. I think the Senator speaks wisely and patriotically in that utterance.

Now, what have we got to face? We have got to face an expenditure of \$50,000,000 annually; but men hold up their hands at the thought of expending \$50,000,000 annually in the development of our rivers. The public servants of this country called the railways are expending from half a billion to a billion dollars annually for railways. Of course, those enterprises are being conducted as private enterprises, but they really constitute a public burden, because they are conducting them as public servants, and the public must pay the interest upon the investment in rates for freight and for fares. The great Government of the United States, having charge of the waterways and jurisdiction over them and solely responsible for making them efficient instrumentalities for transportation, stands

aghast at the expenditure of \$50,000,000 annually in perfecting this system, when private interests expend from five hundred millions to a billion dollars annually in the development of our railways. Yet think how our expenditures have increased under the present inefficient system.

The river and harbor bill here carries \$40,000,000, a very large portion of it, it is true, devoted to harbors. In my judgment, these developments ought to be absolutely divided into separate bills. They have no particular relation to each other. Our harbors relate to foreign commerce in the main, while our rivers relate to interstate commerce. The method of their development is entirely different, and we should not have in the public eye the expenditures made upon our harbors regarded as a portion of the burden which they are called upon to assume for the development of our rivers. We ought to know just how much we are expending for our rivers, and we ought to have them in a separate bill.

I have presented a statement to the Senate containing a segregation of these expenditures in this bill, and we find that about \$17,000,000 is allotted to harbors and about \$23,000,000 to rivers. I have also had those expenditures subdivided according to the different waterway systems, so that you can see how much expenditure there is in each watershed; and we find that of the \$23,000,000, \$15,000,000 is being spent now on the Mississippi River and its tributaries. My bill for river regulation involves the expenditure of \$50,000,000 annually, of which one-tenth, or about \$5,000,000, goes to the rivers, not the harbors, of the Atlantic coast; \$5,000,000 to the rivers of the Gulf coast, exclusive of the Mississippi River; \$25,000,000 to the entire Mississippi River and all its tributaries, divided up, \$10,000,000 to the Mississippi River below Cairo; \$5,000,000 to the Ohio; \$5,000,000 to the Missouri; \$5,000,000 to the upper Mississippi; and then about one-fifth, or \$10,000,000, for all the waterways finding their way to the Pacific Ocean.

We are already spending under our present inefficient system \$23,000,000, and this river regulation bill which I have proposed, embracing every drainage area in the country, involves only \$50,000,000, but it involves that expenditure continuously for a period of 10 years; so that the coordinated scientific and engineering services of the country having anything to do with water may enter upon large and comprehensive plans, involving every watershed in the country, with a certainty that \$500,000,000 will be available in 10 years; and to that \$500,000,000 spent by the Nation at least \$500,000,000 will be added by the respective States and by private interests in the development of the uses of water related to that of navigation; so that between the two we will practically have in the next 10 years a billion dollars spent in the development of that greatest of national assets, the water of the country for every beneficial use.

If we can with our present revenues stand the expenditure of \$23,000,000 annually, can we not with the increasing wealth and population of the country and the increasing revenue of the country stand \$27,000,000 more during the next 10 years? If our present sources of revenue are not sufficient, can we not, by the paltry tax of one-quarter of 1 per cent upon the incomes of the country, raise \$25,000,000 in addition to that which we already expend upon our rivers?

One-quarter of 1 per cent, I say, upon the incomes of the wealth of the country, for the statisticians of the country have estimated that a tax of 1 per cent will produce \$100,000,000 annually. Can not the great wealth of the country sustain this great enterprise that is to advance the wealth of the country; that is, to increase the productive energy of every section of our country and increase not only its productiveness but its facilities for transportation and diminish largely the present cost of living and the present cost of operation? Thus we will not only increase production, but diminish operating expense.

Can not our great Nation undertake a work that Germany has been conducting ever since it became an empire and with remarkable consecutiveness and continuity of purpose, a work that France has been pursuing for over a century, so that today you can go by water through related and connected waterways, through the artificialized waterways connecting the natural rivers, from almost any part of Germany to any other part of Germany, and from almost any part of France to any other part of France?

Mr. President, I published the other day resolutions which have been passed by State legislatures in favor of this river-regulation bill, resolutions that have been passed by the chambers of commerce and boards of trade from Philadelphia to San Francisco, utterances of great conventions held for the conservation of our natural resources, great conventions held for the development of waterways, for the development of forests, and for other purposes; resolutions passed unanimously by the governors of all the States in conference assembled at

the White House, utterances of the public press from one end of the country to the other, demanding big plans, big works, big expenditures, and a consecutive policy. Yet Congress has lagged behind. Congress necessarily is always behind public opinion. It should be. Its action is the reflection of a public opinion already created. It rarely creates public opinion. It is exceedingly slow to yield to public opinion, not because it is hostile to public opinion, but because it wishes rightly to know in what direction public opinion points.

Is there any need of our waiting longer? If all conventions are convinced, if State legislatures are convinced, if both parties, as indicated by their platforms, are convinced, if the magazines of the country are convinced, if the newspapers of the country are convinced, is it necessary that we should wait longer in order to ascertain what public opinion is upon this subject?

Mr. HITCHCOCK. Mr. President—

The PRESIDING OFFICER. Does the Senator from Nevada yield to the Senator from Nebraska?

Mr. NEWLANDS. Certainly.

Mr. HITCHCOCK. I desire to say, as bearing out what the Senator from Nevada has stated, that I believe there is a growing sentiment, particularly in my region of the country, in favor of some systematic plan such as the Senator proposes.

I hold in my hand a resolution passed by the senate of the State of Nebraska last week, which I shall present to-morrow at the proper time, urging the Government to pay more attention to and make proper appropriations for conserving such watersheds as there are in the State of Nebraska, particularly with a view to the impounding of waters for irrigation purposes, so that they may not only serve the lands in Nebraska but may be prevented from becoming a cause of danger to the lands upon the lower rivers in seasons of flood.

While this applies only to Nebraska, I believe it illustrates a growing sentiment all over the country that there is some connection between the impounding and use of waters for irrigation purposes and thus preventing that same water from becoming a cause of danger when seasons of flood arise.

Mr. NEWLANDS. I may say that public opinion is made up upon that subject. You can not read a single one of the popular magazines without finding some reference to this subject, all favorable to it. You can not find a political convention that meets that declares against it; and all of the national conventions have declared for it. You can not find a convention met together for any public purpose to-day without finding some expression relating to the necessity of big plans and works in the development of the water assets of the country. All this is intensified by the declaration of the representative governors of the various States, who, in the resolution which I presented to the Senate the other day, expressed an intense conviction upon this subject.

I have here two editorials which have recently come into my hands which I should like to have inserted in the Record—one from the New England Homestead, a great agricultural magazine, devoted to the farming interests of the New England country, and the other from Southern Farming, a magazine published at Atlanta, Ga.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NEWLANDS. I will read only a few lines. The New England Homestead says:

The legal, ethical, moral, political, economic, and social justice to all the people all the time of Federal control of navigable interstate streams is absolutely unquestionable. It should be passed upon as a finality by the Supreme Court.

The Windsor Locks dam bill probably will not be acted upon in the House before Congress adjourns March 4. This is just as well. It will give the new administration the full duty of setting forth its policy toward conservation. Certain it is that the American people will permit no backward step whereby their priceless heritage of flowing waters, and of forests and mines in the public domain, shall continue to be exploited by the few at the expense of the many, for not only present but future generations.

Meanwhile the action of the Federal Senate makes it doubly imperative that each State legislature take prompt and adequate action to wisely conserve the public welfare within the limits of the respective States, regarding the utilization of all forms of natural resources within the respective States.

Here let me say that in numerous States of the Union there are waterway commissions, conservation commissions, and similar organizations already created under the force of this movement, with a view to cooperation with the National Government. Of course it is utterly impossible to enter upon any scheme of development of our waterways without the consent and the participation of the National Government.

So, also, Southern Farming has an article entitled "Harness the Mississippi River system." This paper is published at Atlanta, Ga. The heading continues:

How the Nation can do it—Benefits to every State—The hydroelectric trust brought to its knees—No conflict between Nation and State—

A revolution in railroad and water transportation—Marvelous developments in sight for the people, not the trusts—The South may thus prevent disastrous floods—May promote drainage of wet lands, irrigation of dry lands—Each State is aided in developing its water powers and other resources—How every Southern State may cooperate with Nation in this wise development.

The matter referred to is, in full, as follows:

[From New England Homestead, Feb. 22, 1913.]

GOOD AND BAD ACTION BY THE UNITED STATES SENATE IN THE WINDSOR LOCKS DAM BILL.

All persons engaged in the business of transmitting hydroelectric power between the States are common carriers subject to the Interstate Commerce Commission. The Borah amendment to this effect was unanimously adopted by the United States Senate February 17, when it passed the Windsor Locks Dam bill.

The Jones amendment was also adopted without objection. It provides that the franchise shall be forfeited if the Connecticut River Co. shall in any way become a part of a combination in the form of an unlawful trust or enter into any contract or conspiracy in restraint of trade.

The Cummins amendment was adopted, striking out the provisions providing for compensation upon termination of franchise. In place thereof was substituted language to the effect that the Federal Government should take over the property at the end of 50 years.

The two amendments first named are excellent. They will doubtless be incorporated in all Federal water-power franchises hereafter. They are right in line with all that the New England Homestead has been fighting for.

The Senate went dead wrong in voting, 74 to 12, to strike out from the bill the provision that the Federal Government may impose a reasonable charge for the use of the water power in this navigable stream. It is this provision that expresses the principle of Federal control over navigable waters and Federal conservation of all natural resources owned or controlled by the National Government. This principle is the right one. It must and shall prevail. The opposition to it is based on a misconception of State rights.

The water in the Connecticut River from New Hampshire, Vermont, and Massachusetts, under this States-right theory, has no "right" to overflow the river's banks and do damage in the State of Connecticut. The Mississippi has no "right" to break the levees and do vast damage by flooding the valuable lands of Mississippi and Louisiana. How absurd such a contention!

The legal, ethical, moral, political, economic, and social justice to all the people all the time of Federal control of navigable interstate streams is absolutely unquestionable. It should be passed upon as a finality by the Supreme Court.

The Windsor Locks Dam bill probably will not be acted upon in the House before Congress adjourns March 4. This is just as well. It will give the new administration the full duty of setting forth its policy toward conservation. Certain it is that the American people will permit no backward step whereby their priceless heritage of flowing waters and of forests and mines in the public domain shall continue to be exploited by the few at the expense of the many, for not only present but of future generations.

Meanwhile the action of the Federal Senate makes it doubly imperative that each State legislature take prompt and adequate action to wisely conserve the public welfare within the limits of the respective States regarding the utilization of all forms of natural resources within the respective States.

[From Southern Farming, Feb. 8, 1913.]

WATER POWER AND THE PUBLIC—HARNESS THE MISSISSIPPI RIVER SYSTEM—HOW THE NATION CAN DO IT—BENEFITS TO EVERY STATE—THE HYDROELECTRIC TRUST BROUGHT TO ITS KNEES—NO CONFLICT BETWEEN NATION AND STATE—A REVOLUTION IN RAILROAD AND WATER TRANSPORTATION—MARVELOUS DEVELOPMENTS IN SIGHT FOR THE PEOPLE, NOT THE TRUSTS—THE SOUTH MAY THUS PREVENT DISASTROUS FLOODS—MAY PROMOTE DRAINAGE OF WET LANDS, IRRIGATION OF DRY LANDS—EACH STATE IS AIDED IN DEVELOPING ITS WATER POWERS AND OTHER RESOURCES—HOW EVERY SOUTHERN STATE MAY COOPERATE WITH NATION IN THIS WISE DEVELOPMENT.

(By Herbert Myrick, president Orange Judd Co.)

[Interests allied with the so-called Hydroelectric Trust already monopolize too much of the water powers of the United States. During the past year these interests have sought to get control of the power in the Connecticut River at Windsor Locks, Conn. They propose to enlarge the old dam there, so as to generate more power. In doing this navigation would be made possible by a canal and locks around the dam.]

[At first the trust wanted to "swipe the whole thing." When the scheme was relentlessly exposed by the Orange Judd's eastern weekly, the New England Homestead, the trust began to modify its demands. It finally agreed to build the lock and canal at a cost of nearly \$500,000 and forever maintain the same for free navigation. For the desired privilege the trust agrees to pay whatever rental the Federal Government may impose for the use of the water of this navigable stream.]

[Finding that there was danger of opposition to the bill in Congress from extreme States' rights advocates, the trust now apparently agrees not to attempt to issue stocks or bonds in excess of the actual cash investment. It agrees to be satisfied with 8 per cent thereon. It agrees that any profits above that reasonable figure shall be shared with the Government in increasing ratio.]

[Thus for the first time in American history it looks like the people's interests are adequately safeguarded and a precedent established that should forever insure that policy. To make assurance doubly sure, I have advocated that no loophole be left for a twilight zone between Nation and State by so amending the bill that the State reserve full supervision over the corporation, including the right to expropriate its property when the State wishes to assume a monopoly of the generation and distribution of water power.]

[In a letter to Hon. JOHN H. BANKHEAD, Senator from Alabama, who with other Senators, including Mr. NELSON, of Minnesota, oppose the measure from an extreme view of State rights, I wrote, January 27, 1913, as follows:]

NO CONFLICT BETWEEN STATE AND NATION.

There is no necessary conflict in hydroelectric development between Nation and State. Let them cooperate under a definite plan, and in the course of one or two decades you will see a development of hydroelectric energy, with corresponding material prosperity and progress in civilization, transcending the imagination. Each State has everything to gain and absolutely nothing to lose through such cooperation.

Take the whole Mississippi River system, for instance. So far as it is navigable the Nation owns its bed and its waters; above the navigable point the Nation also has rights, but in no case may any of these rights be exercised to the detriment of any State.

#### ONE PLAN—ONE AUTHORITY.

The utilization of the flowing waters of the Mississippi system in the interest of all the people all the time may be attained only under national control of the main arteries.

Under such undivided authority one comprehensive plan will make it possible to store up the flood waters in the head reaches, and thus prevent disastrous floods which now annually occur over vast sections of many States.

The stored water, after generating power, will be available for irrigation, or that power may pump water upon areas not otherwise irrigable, or may pump water away from irrigated lands now threatened by oversaturation.

The stored waters, transformed into electric energy, or white coal, will furnish heat, light, and power at low cost for every purpose. But those low prices will be sufficient to pay for maintenance and extensions, interest, and sinking fund. After the construction expense thus shall have been met, prices may be still further reduced.

This is in marked contrast to the present saturnalia of overcapitalization practiced by the Water-Power Trust, whereby it seeks to fasten upon the people for all time charges for hydroelectric energy sufficient to support "securities" representing from two to five times the actual cost of the development.

#### MAKE WATER PAY FOR IT ALL.

The revenue from the publicly owned power plants would be sufficient to vastly improve the navigability of every river in the Grand Basin.

In periods of drought the stored flood waters would be let out to maintain navigation and sanitary flushing of the river drainage system.

On the other hand, by preventing floods, the problem is vastly simplified of draining the present great extent of marshes and swamps.

#### TRULY A NATIONAL PROBLEM.

Thus the problem is national in every respect.

It directly and vitally concerns every State between New England and California, especially every Southern State, the Central West, and the Northwest.

Each and all may profit hugely by the carrying out of this policy along lines of broadest patriotism, constructive engineering, honest financiering, and economical administration.

#### A SELF-SUPPORTING PROPOSITION.

By this national system for the national development of our flowing waters the whole situation is transformed.

Instead of squandering vast appropriations in inefficient work upon river and harbor improvement we will now make the flowing waters earn money enough to efficiently utilize the unrivaled possibilities of our rivers as sources of power, heat, and light, as well as of transportation, irrigation, and drainage.

No longer will floods harass and destroy.

No more will alternate drought and flood menace the health or the wealth of our people.

And the Hydroelectric Trust no longer will have the public at its mercy.

#### EACH STATE AIDED.

And the beauty of such national policy is that without infringing upon the rights or duties of any sovereign State it becomes possible for each State likewise to encourage the development of the hydroelectric resources in the many smaller rivers within the respective States.

I would go further and have each State own and control, develop, and operate the flowing waters therein. Public ownership of water-works by cities and towns has long been successful. The application of the same policy to the States and upon interstate and navigable rivers to the Nation is a logical development.

Yet there are two sides to State versus corporate power plants. And if State or Nation will not itself develop its hydroelectric resources corporate capital should be encouraged so to do.

#### PREVENT A CONTINUANCE OF THE PRESENT SATURNALIA OF OVERCAPITALIZATION.

But right at this point we come squarely to the parting of the ways. The so-called Hydroelectric Trust not only presumes to be more capable of developing water power, but by virtue thereof has assumed a sort of "divine right" to indulge in what I have termed a "veritable saturnalia of overcapitalization."

#### AND THAT'S JUST WHAT'S THE MATTER.

In this respect it is a contest on the part of the Hydroelectric Trust for untold millions of unearned profits.

While the people, the States, and the Nation wish to so protect their own interests that, after insuring a fair return upon the capital actually invested, our flowing waters shall ever be servants, and not masters, of the people.

This principle of limiting the issue of securities to the actual cash invested or of limiting the returns upon such capital to a reasonable figure and then dividing any excess profits with the public, seems to be established in the Windsor Locks Dam bill. The same principle is enforced upon the Montana Power Co. in the franchise recently granted its transmission lines over public land for electrifying a western railroad. In other words, the Hydroelectric Trust admits defeat when it gets up against Uncle Sam.

#### OUR SOUTHERN STATES

will benefit even more than other regions. The Mississippi will no longer inundate vast reaches of valuable lands when this plan is carried out. The saving of life, health, and property, the insurance against floods, will alone equal a magnificent return upon the entire cost of the whole scheme of harnessing the mighty river.

#### RAILROAD TRANSFORMATION COMING.

Another economic development is coming, which vitally reinforces the fundamental wisdom of the above view:

Ere many years there will be at the mouth of every coal mine—anthracite, bituminous, or lignite—great producer-gas plants. The coal will be dumped directly into them, and the resulting energy, in the form of electric juice, will be transmitted by wire.

This will also revolutionize the whole problem of transportation by rail.

Having no more coal traffic, railroads and their terminals will be able to adequately care for the coming vast development of other traffic, without requiring enlargements and expenditures so great as to be impracticable.

#### THE PEOPLE'S INTERESTS CONSERVED.

Then the energy obtained from black coal will have to compete with energy from the flowing waters. Thus the people for all time will be sure of getting power at reasonable cost.

The Coal Trust, which even the United States Supreme Court has not been able to break down, will have met its Waterloo.

The railroad problem will be much easier of settlement.

Agriculture, industry, and civilization will advance upon a scale commensurate with the resources and genius of the American people.

Mr. NEWLANDS. I commend this article in a southern paper to the representatives from the lower Mississippi, who have stood watch upon the meager appropriations given to them for that short reach, and whose vision as yet has not extended to such an enlargement of the Nation's operations regarding the waters of the country as to embrace the entire Nation.

I also wish to call attention to an article written by Mr. A. L. Crocker, who is the chief of the Minnesota water commission, a commission organized in that State not only for local work but for cooperation with the Nation in a full development of our waterways. I shall ask to insert this and some editorials I have here in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NEWLANDS. I will simply read the heading, which indicates its subject:

Waterways plan finally evolved—Scheme submitted for improvement of Mississippi from Minnesota to Gulf—Legislature urged to act—Argued Federal Government and States along river should cooperate to finance movement.

Mr. Crocker says in a forceful sentence:

The cry is now going up in many directions there must be cooperation between the Federal and State Governments to cure this evil. It must be done. It can't be neglected. The evil will grow worse and worse, and it has become unendurable.

But in curing the flood evil other and immense benefits follow. Health is promoted; a steady supply is furnished the water powers; and wherever navigation exists the stream regulation is of the highest importance. No State needs a State policy in managing its waters more than Minnesota, and yet its importance is not generally appreciated.

The matter referred to is, in full, as follows:

[From the Minneapolis Journal, Feb. 3, 1913.]

STATE BLAMED FOR DAMAGE BY WATER—MISMANAGEMENT IS WORSE THAN THAT OF LANDS, SAYS A. L. CROCKER.

The State's loss by careless handling of State lands, estimated at more than \$7,000,000 by Attorney General L. A. Smith in a recent talk before a legislative committee, is exceeded by the damage from bad management of water, according to A. L. Crocker, of Minneapolis, chairman of the State waterways commission. "One of the State's mineral properties, which the State let go for a song, after being warned by the State geologist, is worth \$12,000,000," said Mr. Crocker to-day. "What is true of State farm lands and State timber and State iron is the greatest in value next to the soil of the State."

"All over Europe, Canada, and in many of the States in this country, from Maine to California, the hitherto neglected asset, water, is now being actively considered. Minnesota has not started. It has no policy. At this session of the legislature one should be entered on. Here in Minnesota and all over the world the damage by floods has loomed into vast and ever-growing importance. Last year the loss in the lower Mississippi Valley was \$100,000,000, and again this year another terrific flood is raging. The direct losses we read of do not cover the damage done, for the subsequent losses in short crops and the deterrent effect on capital seeking investment swell the total far higher. On the Ohio and Sacramento Rivers, and indeed all over the world, the annual loss from floods is colossal. Right here in Minnesota in 3 years out of 15 there was a \$1,000,000 flood loss in the Minnesota Valley followed by a typhoid epidemic. Of the 50,000,000 acres comprised in Minnesota a vast area is swamp, which is rapidly being drained, and when drained there will be nothing to prevent the rapid run off of the flood water followed by devastation and sickness and a lack of water for power and navigation. In New York they estimate the annual loss from typhoid—which can be prevented by a State administration of its waters—at \$8,000,000.

By contrast the report comes from Budapest that remedial hydraulic measures instituted in Hungary increased the national wealth \$187,000,000. The area drained by the Mississippi equals that of Austria, Germany, France, Holland, Italy, Spain, Portugal, Norway, and Great Britain combined, and when this area, 41 per cent of the United States, goes on a flood at one time no levees on the lower river can stand the strain. There must be an alternative, and the only one is that of impounding the flood waters at their source. The cry is now going up in many directions there must be cooperation between the Federal and State Governments to cure this evil. It must be done. It can't be neglected. The evil will grow worse and worse and it has become unendurable.

But in curing the flood evil other and immense benefits follow. Health is promoted, a steady supply is furnished the water powers, and wherever navigation exists the stream regulation is of the highest importance. No State needs a State policy in managing its waters more than Minnesota, and yet its importance is not generally appreciated."

[From the St. Paul Pioneer Press, Feb. 27, 1911.]

WATERWAYS PLAN FINALLY EVOLVED—SCHEME SUBMITTED FOR IMPROVEMENT OF MISSISSIPPI FROM MINNESOTA TO GULF—LEGISLATURE URGED TO ACT—ARGUED FEDERAL GOVERNMENT AND STATES ALONG RIVER SHOULD COOPERATE TO FINANCE MOVEMENT.

To the Pioneer Press: In view of several partial statements which have appeared recently and in view of the importance of the subject of State waterway and water-power legislation while this legislature is in session, I ask permission to make a further and fuller presentation of the subject than has yet appeared in print.

Gov. Eberhart has started a movement for the public benefit that should bring him lasting fame as its real and far-reaching merits shall

appear. It is up to this legislature to see properly and grasp by legislation the great opportunities which offer themselves now, but which have in part escaped and which will rapidly disappear altogether and forever if not seized without further delay. That would be a calamity not only to the State of Minnesota but to the entire Northwest and to the entire Mississippi Valley south of us.

#### IMPORTANCE OF MINNESOTA.

In this whole combination Minnesota occupies in importance that position which a keystone does in an arch. As our forests are cut off and our vast swamps are drained the sprinkle of disaster which already depresses the Minnesota Valley will become the raging storm, and the only way to cure permanently the flood evil is by replacing the natural swamp and timber sponges by artificial reservoirs to impound the floods of spring, releasing them gradually later. In doing this great water powers will be created, as will canals or cheap water roads over the State, free to the farmer and the manufacturer. This means redemption of the waste places of the State, the peopling of those portions now wilderness, an increase in land values, new towns, new electric roads gridironing the whole State until the 2,000,000 persons now dwelling in the State become, perhaps, twice that number.

#### WOULD DRAW MANUFACTURING.

These new water powers all over the State will inevitably draw manufacturing. The wool of Montana now passing through us to Boston should be stopped here, financed, manufactured, and distributed from here. Following the first steel plant, now under construction at Duluth, there should be others, and on the great water powers near there a host of secondary iron and steel manufacturing should spring up.

The old theory of iron manufacturing has been that the ore went to the fuel, but the practice of taking Minnesota ore to Pennsylvania to the coal is now being reversed by reason of the cheap freights on the Great Lakes on coal coming to the ore district. Cheap water transportation on the Lakes is bringing the steel manufacturing to Minnesota, and the market for iron and steel is moving west and can be supplied cheaply from Minnesota.

This argument of cheap water carriage for the benefit of Minnesota I will now apply to the Mississippi River. The great storage of flood waters will increase the low-water navigation on the Mississippi River as far down as Keokuk, and according to good authorities as far as St. Louis. On high authority—a United States engineer of many years' experience on this end of the river—it is said, with the reservoirs possible of construction in Minnesota, a minimum water channel of 12 feet can be maintained down to Prescott, and if the same reservoir work is continued on down, from 12½ to 15 feet low-water channel can be had. But dead low water exists for a short time only, and a much higher stage may be expected for much of the navigation season.

#### FREIGHT CARRIED BY RHINE.

What this may mean can be estimated when we consider that the Rhine, on a maximum depth of 9 feet, and from that to less than half that, carries annually 25,000,000 tons. Thus Minnesota is seen to occupy the unique strategic position, the key, so to speak, to trade and manufacturing afforded by its location at the northwest corner formed by the Great Lakes water system to the east and the Mississippi River for 1,800 miles to the south.

And from this angle, from Minnesota, radiates the vast system of railroads over the great Northwest.

Such a combination of advantages is rare, if not unknown, in any other country. Neither the Northwest nor the Mississippi Valley has done more than begin to grow, and with the coming inevitable growth queenly Minnesota will come into her own, if only the lawmakers of this legislature see and act in accordance with the necessities of the movement.

#### WHAT CHICAGO HAS DONE.

From Chicago via the Illinois River to the Mississippi River near St. Louis and down to the Gulf an improved river is planned for a depth of from 14 to 20 feet. Chicago has spent \$60,000,000 to build the upper end and the State of Illinois has amended its constitution and has bonded itself for \$22,000,000 with which to carry on the work within its own borders.

#### SINISTER MOVEMENT SEEN.

Right here I want to call the attention of our legislature to a sinister movement, and one which is threatening and may strangle development in our great State, the Northwest, and the Mississippi Valley to the infinite loss of all, unless our present legislature acts to prevent it.

Just below Chicago on this great \$60,000,000 canal an ostensible electric light company has got a grip that threatens that whole scheme of navigation from Chicago down. The State of Illinois is now in the midst of a life-and-death fight against this octopus, which nobody for a moment thinks is a genuine lighting company. Its control and animus is in Wall Street, and the same genius for evil is now seeking under cover, of course, to get hold of our Minnesota Valley and our high-dam water power between the cities of Minneapolis and St. Paul. It is a movement, smooth as oil and deadly as a viper, that should be scotched now by this legislature in the interest of the public welfare. No powers should be granted by this legislature or by Congress which in any way may obstruct what the State of Minnesota may want to do. This is ordinary common sense and business prudence and requires no argument.

#### DEVELOPMENT DEMANDED.

Coming back to the river and the deep-water channel from Chicago to the Gulf, the whole Mississippi Valley wants our aid, from the Missouri River to Minneapolis and up through the State, developed to the utmost. I am now in correspondence with men of large affairs, covering the entire Mississippi Valley to the Gulf, who propose to form a united movement on the part of the Mississippi Valley States to work for a complete and harmonious channels improvement from the Gulf of Mexico up and into Minnesota, and I am receiving strong assurances of intelligent, sympathetic interest, a recognition of the sense and reasonableness of the plan, and a willingness and readiness to enter upon it.

#### WHAT IS INVOLVED.

Just a brief mention of what is involved. The work is naturally divided into three parts. From the mouth of the Missouri River, where a vast amount of sand and earth enters the Mississippi, for many hundred miles to Louisiana, where the deep, still water from the Gulf begins, the problem is one of bank dikes to prevent flood and a scouring and digging out of the sand bars which pile up between the long, deep pools. From the Missouri River to Minneapolis the river is gentle in its flow, having a fall of only about 7 inches to the mile, except at the two points where the earth's crust is broken, making rapids at Keokuk and Rock Island. The extremes between flood and

low water on this river are only 20 feet apart, while on the Ohio River they are 70 feet. With the channel once fenced in by lock and wing dams and bank protection, as is now being done by the Federal Government, there remains only to be added the possible reservoir construction for increasing the low-water flow.

#### POSSIBILITY OF RESERVOIRS.

Lyman E. Cooley, engineer of the Chicago Canal, writes me that while investigating the possibilities of the Keokuk Dam he estimated that a limited reservoir construction above that point would increase the river flow 60 per cent as far down as Keokuk and that the most of such reservoir work would be up here in Minnesota. This possible reservoir development being mostly in Minnesota, it can only be done by the State of Minnesota, though its benefits to the whole river below and to all those States are clearly seen and desired by the whole Mississippi Valley. I therefore count confidently on the support of them all to the granting to the State of Minnesota of the 1,500,000 acres of Government land still remaining within the borders of the State, which could then be used as the basis for a State bond issue with which to do this comprehensive State reservoir work. These lands are to-day of little value. As drainage progresses and the State fills up they will become more and more valuable and can be sold as seems best until all are disposed of, the proceeds to go into a sinking fund with which to retire the issue of State bonds, say, in 40 or 50 years.

#### MEANS AN AMENDMENT.

Of course this means an amendment to our State constitution, as was accomplished in Illinois and has been done in other States. In addition, the State should be able to buy from the United States Government, at cost, the high dam between St. Paul and Minneapolis. This is estimated to cost less than \$1,500,000. It will produce a minimum revenue which, called 5 per cent interest, would represent an investment of \$7,500,000, and really much more, as I am only using minimum figures to make my argument safe. This would permit the State to issue bonds enough to pay for the dam and a large amount more, the latter being used to begin work on other dams, say, in the Minnesota Valley. The lands and the dam should permit a maximum State bond issue of \$20,000,000, only to be issued piecemeal and strung along for years. Then, based on new water power created, as in New York State, other State bonds could be issued, so gaining enough funds to do all possible State reservoir building at no cost to anyone, simply using the State credit as a safe asset that will pay the cost of construction and then be left in State ownership forever afterwards to yield a State revenue with which to cut down State taxation.

#### PROPOSITION IS COMMENDED.

I have studied this project for years. I have put it up to the best men I can find—United States engineers, large capitalists, here and elsewhere, political leaders here, in Washington, and down the whole Mississippi Valley—and I have yet to find a single one who says it is impractical or unreasonable. On the contrary, I have never failed to receive the indorsement of these men. As a loyal citizen of Minnesota, as a member of the waterways commission appointed by Gov. Eberhart to investigate and recommend measures and ways and means, I now submit the plan for the thoughtful and honest consideration of the Legislature and by the people of Minnesota.

#### BILLS BEFORE LEGISLATURE.

Two bills introduced by Hon. L. C. Spooner are now before the legislature. One calls for the creation of a State water-supply commission to care for the water interests of the State; and if ever any State needed competent, honest servants, Minnesota needs them now in the promotion of this enterprise.

The second bill calls for funds to take an engineering inventory of the State's assets in water resources. The sum is far too small, but it will make a start.

Canada shames us all in her large intelligence in such matters and in the settlement of her cheap lands. She is getting the settlers who ought to locate in this State, and she has just paid \$75,000 for an engineering investigation of the proposed waterway from Lake Superior to the Ottawa River.

When our next legislature meets two years hence, we should be prepared to offer that body the facts regarding our State water assets, with recommendation as to the proper action to take, such as a possible constitutional amendment permitting an issue of construction bonds. We ought to have things ready in Congress for turning over to the State the Government lands and the high dam, as already indicated. Meanwhile we should keep every predatory and hostile interest from securing a strangle hold on any stream or dam or reservoir site that the State might possibly want. Any water commission that may be created can not hope to more than make a beginning in the next two years, and I hope this legislature will appoint one of its number as the accredited representative of the State to cooperate with the water commission, if such be created, this representation to treat also with the various States and interests in the Mississippi Valley and with the President of the United States and Congress as shall be necessary.

The man to be selected for this important duty should have a broad, constructive grasp of the whole proposition. He should be a man of recognized integrity and unflinching purpose, equipped with a personality and power of presentation of the subject that shall carry weight.

#### MINNEAPOLIS.

A. L. CROCKER.

[From the New Orleans Item.]

#### THE LEVEES AND THE RIVER.

What has happened at Beulah, what is threatened at Filters Point, what may come at Alsatia or Hymelia or Panther Forest or above Morganza, if the river continues to rise, is irrefutable evidence that the "levees-only" method of handling the problem of the Mississippi Valley is pitifully inadequate and futile.

What certain sage engineers have said about the impossibility of doing anything else to regulate floods, save building levees, will not be accepted without question by the people endangered. It is of too recent occurrence that learned gentlemen of the engineering profession staked their reputations that the Panama Canal could not be built in the exact way and manner in which it has been built, and that other learned gentlemen said that neither the Chagres in Panama nor the Nile in Africa could ever be "controlled."

What has been proven possible in one watershed would seem to the layman's mind possible in another, when the only fundamental difference is in magnitude, especially in this day when magnitude of any material problem has ceased to awe.

People along the Mississippi flood frontage remember that the record-breaking, levee-smashing water of 1912 came only from some of the lower rivers plus a torrent from the Ohio. They wonder in fear what would happen if, as is entirely possible, the Missouri, the upper Mississippi, and the Ohio should happen to be exceptionally high at the same time that the lower basins were already filled.

What is needed is an impartial survey of the whole great interrelated question of water conservation, irrigation and reclamation, transportation maintenance, and flood prevention from the headwaters to the jetties; decision upon an inclusive program covering every phase; and the adoption of that program and provision for it as a whole, just as the construction of the Panama Canal was planned, adopted, and provided for in its entirety.

The Federal Government is the only agency capable of doing this.

The people of the valley who fail to see beyond the tops of their levees, and who fear "invasion of States' rights," are blindly ignorant of their own interests, forgetful of the interests of millions of others who live elsewhere in the vast watershed of the Mississippi Valley.

The "problem of the valley," extending in its various phases over 28 States and affecting over 50,000,000 people, is one and the greatest of the many problems which transcend in moment and in scope the capacities or the powers of individual States.

[From the National Reclamation Association, New Orleans.]

#### FLOOD PREVENTION.

In its issue of February 1, 1913, the Los Angeles Tribune prints the following editorial:

##### "ANOTHER OBJECT LESSON OF FEARFUL COST.

"That the people of the Mississippi Valley should again be suffering personal distress and enormous loss from floods within a year of a former catastrophe is reason for serious reflection on the American way of despoiling the country of natural resources without concern for results, and trusting to luck for absolution from the logical results of such folly.

"One generation is now paying fearfully for the denuding of the watersheds along the Mississippi, Missouri, and Ohio Rivers. Yet so slow is humanity to learn the real lessons of experience that it can not be predicted when the scientific and frugal methods of prevention will take the place of prodigality, with real river protection and improvement.

"According to figures compiled by Hubert Fuller and published in the North American Review, the Government has spent more than \$90,000,000 for the 'improvement' of the great stream that is now an annual menace. The result is that 'it costs the United States \$20 for every ton of freight carried' on the three great streams of the Middle West, figuring in the expense the interest on the investment.

"We are having a terrible object lesson on the evils of the pork barrel whereby millions are taken out of the National Treasury and spent with the abandon of the drunken sailor on our waterways, big and little, for the political benefit of Members of Congress. After two floods of such stupendous harm in the Mississippi Valley it should not be necessary to argue much for the Newlands bill which proposes to harness the headwaters of America's great streams."

Mr. NEWLANDS. These editorials, coming from New England, the South, and the Pacific coast, indicate how general the expression is in favor of big and comprehensive National and State action.

Here we find the people upon the tributaries and source streams of the Mississippi moving. At Pittsburgh, where they suffer annually a loss aggregating from three to five million dollars from the floods, they appointed what is called the Pittsburgh Flood Commission, for the purpose of looking into this matter, and appropriated \$100,000 for surveys and plans. They appreciate the importance of this question. That commission has passed resolutions commendatory of this bill. The Pittsburgh Chamber of Commerce has passed similar resolutions. Everywhere along the line you will find a demand for the conservation of the waters as the most valuable asset of the Nation; a demand for teamwork upon the part of the Nation and the States, a demand for teamwork upon the part of the scientific services that are now, in a detached and separated way, working upon our rivers; a demand for large appropriations; a demand for continuous work.

Why is it that our southern friends have not come into this movement with the vigor that usually characterizes them? I am at a loss to understand. Our Southern States are either traversed by the greatest of our rivers or are the sources of more rivers than any other portion of our country. There is no part of the United States that would benefit so much from the cooperation of rail and boat as will our Southern States, with their numerous rivers, arms of the sea, and the Gulf; with their splendid harbors, with their magnificent climate, with their extraordinary capacity for production; and yet there is more inertia upon this subject displayed by the representatives of the South than by the representatives of any other part of the country.

I have been unable to understand it, unless it is that so large a portion of the existing expenditures upon our rivers is made in the Southern States that they are unwilling to disturb that system, and that they are fearful of contemplating a great and efficient system that, in the end, will do much more effective work, lest their pending operations be temporarily disturbed. They must be pleased with the individual-project system, which makes each individual Congressman the arbiter of his own district, the controlling power as to whether or not appropriations shall come to that district. Such a condition as that has a subtle influence upon judgment and upon action. It is a part of the

old spoils system that prevailed for so long to the injury of the country and the injury of the administration of its offices, which was continued as regards projects in waterways and public buildings, and which is only gradually yielding to better methods as the result of scientific legislation.

But I think if our southern representatives will go and test the sources of political power, the people themselves, they will find among them a general demand for a revolution of the existing system. The Senator from Georgia [Mr. SMITH] will recall that some three or four years ago it was my privilege to address the combined boards of trade of Georgia at an immense banquet given in Atlanta, at which the Senator, then the governor of the State, was present. I think the Senator will bear witness with me to the fact that not only was extraordinary interest manifested in the scheme of national development and national and State cooperation that was then discussed, but that there was an enthusiastic expression of favor regarding it. Wherever in the South nonpolitical gatherings are held—the meetings of the Southern Commercial Congress, the meetings of the Southern Reclamation Association of Louisiana, waterway conventions at Memphis, and elsewhere—you find the most enthusiastic expressions in favor of this policy. You will find to-day the two leading newspapers of New Orleans, the Item and the Picayune, advocating it. You will find the Progressive Union of New Orleans, a great commercial organization established for the advancement of the interests of the South, in favor of it. You will find the Reclamation Association of that State in favor of it, and you will find them all condemnatory of the narrow spirit of some southern statesman that insists simply upon a vision confined to the lower Mississippi and disregards the national aspirations upon this subject.

This movement is now being, I may say, in a measure directed and led by Mr. George M. Maxwell, formerly an able and distinguished lawyer of California, who became so interested in the question of irrigation that he abandoned his practice and devoted entirely seven or eight years of his life to the active propaganda for its advancement. He was the head of the executive committee of the Irrigation Association, and for years, both in the public press and upon the platform, was the strong advocate of western sentiment upon this subject. Led by his study of that subject to the conviction that irrigation was only a part of the water question, and a small part, and that the proper development of our water resources involved teamwork between the Nation and the States and the development of all related uses of water in the advancement of wealth and prosperity, he has taken up this propaganda. He was chosen as chief of the executive committee of the Pittsburgh Flood Commission; he has been chosen as the chief of the executive committee of the Louisiana Reclamation Service or Union; he has been chosen as a representative of the leading waterway association on the Pacific coast, where his influence has always been potent for wise measures. He is to-day conducting a propaganda at New Orleans, supplying all the various communities with literature upon this subject, almost suffering at times from pecuniary distress as the result of his disinterested labors.

I have received a telegram from Mr. Maxwell expressing his inability to be here at this important time, and expressing the hope that in my eagerness to secure action now I will not accept partial results by way of amendment; that the thing to do is to fight for the river-regulation bill as drawn; and that if that fight is conducted earnestly and consistently victory will soon be our reward. Animated by the suggestion, I have not viewed with hospitality the various suggestions that have been made by my colleagues upon this floor that I should narrow the operation of this measure by resorting to some temporary expedient.

We have been for 100 years pursuing this question; we have the accumulated experience of engineers, constructors, and publicists upon it; we have a universal public sentiment. It is true that the Committee on Commerce accepted a part of an amendment which I offered, which you will find in the bill, and with which they propose to satisfy me, but I am not satisfied. It is true that appeals have been made to me not to imperil the passage of the pending bill by long discussion in the closing hours. I am not insensible to that appeal, but the time will come, unless some action is taken, when upon the river and harbor bill the representatives of regions other than the lower Mississippi Valley will see to it that this is planned and conducted as a great national and interstate enterprise, and they will, at the risk of imperiling and destroying this insufficient legislation, which parties interested have been building up, insist upon large national and interstate plans and works under the cooperative methods for which my river-regulation bill calls.

Mr. BURTON. I offer the amendment which I send to the desk.

The PRESIDENT pro tempore. The Secretary will read the amendment.

The SECRETARY. After line 17, page 7, substitute a comma for the period and insert the following:

And the Secretary of War is hereby authorized to make such rules and regulations for the navigation of Ambrose Channel, after the completion of its improvement, as he may deem necessary or expedient to insure its safe use in all kinds of weather, night and day, for all vessels under control and running under their own power, and to this end he may, in his discretion, forbid its use to tows of every description and to sailing vessels.

Mr. NELSON. There is no objection to that amendment.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. BURTON. I offer another amendment, which I send to the desk.

The PRESIDENT pro tempore. The amendment will be read.

Mr. BURTON. Before it is read, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator from Ohio suggests the absence of a quorum. The roll will be called.

The Secretary called the roll, and the following Senators answered to their names:

|              |               |            |              |
|--------------|---------------|------------|--------------|
| Ashurst      | Gallinger     | McLean     | Simmons      |
| Bankhead     | Gamble        | Myers      | Smith, Ariz. |
| Borah        | Gardner       | Nelson     | Smith, Ga.   |
| Bourne       | Guggenheim    | Newlands   | Smith, Mich. |
| Bristow      | Hitchcock     | Oliver     | Smoot        |
| Brown        | Jackson       | Owen       | Stephenson   |
| Burnham      | Johnson, Me.  | Page       | Sutherland   |
| Burton       | Johnson, Ala. | Paynter    | Swanson      |
| Catron       | Jones         | Percy      | Thomas       |
| Chamberlain  | Kavanaugh     | Perkins    | Thornton     |
| Clarke, Ark. | Kenyon        | Pittman    | Webb         |
| Crawford     | La Follette   | Pomerene   | Wetmore      |
| Cullom       | Lea           | Richardson | Williams     |
| Curtis       | Lippitt       | Sheppard   | Works        |
| Foster       | Lodge         | Shively    |              |

Mr. SIMMONS. I was requested to announce that the Senator from South Carolina [Mr. SMITH] is absent on official business.

The PRESIDENT pro tempore. On the call of the roll 59 Senators have answered to their names. A quorum is present.

Mr. BURTON. It is anticipated that some time may be consumed in the discussion of the amendment I have offered. I will say that is not my own opinion, as I do not expect to occupy more than a very few minutes. The Senator from Idaho [Mr. BORAH] desires to present an amendment which will provoke no discussion probably, and I yield to him for the presentation of that amendment. After that I desire to have the amendment which I have offered read.

Mr. BORAH. After the word "reserved," on page 54, line 23, I move to insert what I send to the desk.

The PRESIDENT pro tempore. The Senator from Idaho offers an amendment, which will be read.

The SECRETARY. On page 54, line 23, at the end of the committee amendment already agreed to at that place, insert:

"Nothing in the foregoing section or in this act shall be construed to embarrass, hinder, or deny the right of a State through its public utilities board or commission or in such other mode as the State may lawfully provide, to regulate and control the rates and charges for which any corporation (public or private), company, or individual shall furnish hydroelectric power or electricity to the people of the State when the same is intrastate business, or to embarrass, hinder, or deny the right of the National Government, through the Interstate Commerce Commission or such other mode as Congress may provide, to regulate and control the rates and charges for which any corporation, public or private, or any individual shall furnish hydroelectric power or electricity to the people of any State when the same is interstate business, and that notwithstanding any of the provisions of this act there is reserved against all grants and privileges herein made or given the right of public regulation and control as to the rates and charges for which hydroelectric power or electricity may be furnished, sold, or disposed of to all those desiring to purchase or use the same."

The PRESIDENT pro tempore. The question is on agreeing to the amendment proposed by the Senator from Idaho.

Mr. WORKS. I should like to inquire of the Senator from Idaho whether this is an amendment to the proposed amendment of the Senator from Ohio?

Mr. BORAH. No; it is an amendment to the bill as it now stands. If the amendment of the Senator from Ohio should be adopted, it would be in operation, nevertheless.

Mr. WORKS. The reason why I asked is because it seems to be a qualification of the provision intended to be inserted in the bill by the Senator from Ohio.

Mr. BORAH. I conceive this amendment to be important by reason of the amendment which was put in upon page 53 of the bill, with reference to the Minnesota dam-site amendment.

Mr. OWEN. I wish to ask the Senator from Idaho if his amendment reserves to the State the right to regulate the rates, whether the service is interstate or intrastate, or is it confined to intrastate business?

Mr. BORAH. The amendment as it is drawn provides that no grant or privilege given or granted under this bill shall interfere with the State from regulating or controlling the rates or charges for furnishing hydroelectric power when it is intrastate business.

Mr. OWEN. The reason why I asked was because it appeared to have been read with both words in it; but that was a mistake, I suppose, in reading.

Mr. WILLIAMS. I should like to ask the Senator from Idaho what is the need of this amendment? Does he imagine that anything in the bill could interfere with the constitutional right of the State to regulate rates upon intrastate business?

Mr. BORAH. My idea is that a special grant might be such that it would be so construed as to interfere with the powers of the State. Here is a special grant, based upon an apparent consideration, and in which grant the National Government apparently retains an interest, to be used for governmental purposes. Now, I do not want this ambiguous language construed so that this electric company will be deemed an instrumentality or servant of the Federal Government. But aside from this question of law the amendment declares a policy.

Mr. WILLIAMS. I do not know what the clause is and what the character of it is, but if there were language in the bill expressly giving to the Federal Government power to interfere with the regulation of the rates in intrastate business, the language would not be worth the paper upon which it was written. Congress could not by its power subtract from the constitutional rights of the State, nor add to the constitutional rights of the Federal Government. The matter would be left for judicial construction after all.

It does seem to me that offering this amendment to the bill might possibly endanger the bill itself and that it could do no possible good.

Mr. BORAH. Mr. President, I do not disagree with the Senator from Mississippi as to the general constitutional proposition which he has stated, but there is a special grant in the bill to which I am very much opposed, by reason of the fact that in my opinion it might be construed to embarrass a public utilities commission in the discharge of its duty in fixing rates.

If the amendment has no other effect than that suggested by the Senator from Mississippi it would do no harm. It will certainly construe this act upon the part of Congress as Congress intends it shall be construed. But I am most anxious just now to declare as a policy along with all these special grants that of public regulation and control by some other body than the head of a department actuated by a desire to get revenue rather than to protect the people from exorbitant charges.

The PRESIDENT pro tempore. The question is on agreeing to the amendment proposed by the Senator from Idaho.

The amendment was agreed to.

The PRESIDENT pro tempore. The amendment submitted by the Senator from Ohio [Mr. BURTON] will now be read.

The SECRETARY. After line 18, on page 5, insert:

The assent of Congress is hereby given to the Connecticut River Co., a corporation organized and doing business under the laws of the State of Connecticut, to relocate its "Enfield Dam" so called, and to construct, maintain, and operate such relocated dam (which is located opposite Kings Island, in said river, shall extend across both branches of the river), together with works appurtenant and necessary thereto, across the Connecticut River at any point below a line crossing both branches of the river and Kings Island midway between the northerly and southerly ends of said island: *Provided*, That, except as may be otherwise specified in this act, the location, construction, maintenance, and operation of the structures herein authorized, and the exercise of the privileges hereby granted, shall be in accordance with the provisions of the act approved June 23, 1910, entitled "An act to amend an act entitled 'An act to regulate the construction of dams across navigable waters,' approved June 23, 1906": *And provided further*, That the time for completing said dam and appurtenances may be extended by the Secretary of War, in his discretion, two years beyond the time prescribed in the aforesaid act: *And provided further*, That the rights and privileges hereby granted may be assigned with the written authorization of the Secretary of War, or in pursuance of the decree of a court of competent jurisdiction, but not otherwise: *And provided further*, That the Secretary of War, as a part of the conditions and stipulations referred to in said act, may, in his discretion, impose a reasonable annual charge or return, to be paid by the said corporation or its assigns to the United States, the proceeds thereof to be used for the development of navigation on the Connecticut River and the waters connected therewith. In fixing such charge, if any, the Secretary of War shall take into consideration the existing rights and property of said corporation and the amounts spent and required to be spent by it in improving the navigation of said river, and no charge shall be imposed which shall be such as to deprive the said corporation of a reasonable return on the fair value of such dam and appurtenant works and property, allowing for the cost of construction, maintenance and renewal, and for depreciation charges: *And provided further*, That if said company shall neglect or refuse to pay any charge or return demanded of said corporation by the Secretary of War, either by order or under any contract, and such neglect or refusal is based on the ground that said charge or return is invalid or unconstitutional and not within the power of Congress to require, such neglect or refusal on the part of the company shall not affect the rights of said company to hold and exercise all the powers, rights, and privileges granted in this act; and in any suit brought against said corporation for the collection of said charge or return, the said corporation shall have the right to enter its

proper plea to test the constitutionality or validity of said charge or return, and the courts shall take cognizance of the same; and nothing in this section shall be understood as committing the Government to a policy of imposing or not imposing such charges or returns as are herein described from any other company or corporation seeking the assent of Congress under like or similar circumstances.

That the height to which said dam may be raised and maintained shall not be less than 39 feet above zero on the Hartford gauge: *Provided*, That said corporation shall permit the continuous discharge past said dam of all water flowing in the Connecticut River whenever the discharge into the pool created by the dam hereby authorized is 1,000 cubic feet per second or less, and at all greater discharges into said pool shall provide a minimum discharge past said dam of not less than 1,000 cubic feet per second: *And provided further*, That said corporation may, for not to exceed five hours between sunset and sunrise, limit the discharge past said dam to 500 cubic feet per second whenever such limitation will not, in the opinion of the Secretary of War, interfere with navigation. The measure of water thus to be discharged shall include all the water discharged through the lock herein provided for and the present locks and canal of said corporation: *And provided further*, That nothing in this act shall in any way authorize said corporation at any time or by any means to raise the surface of the river at the location just above the present Enfield Dam to any height which shall raise the surface of the river at the lower tailrace of the Chemical Paper Co. in Holyoke, Mass., higher than can result from the erection or maintenance of any dam or dams which said corporation is authorized to erect or maintain in accordance with the order and decree of the circuit court of the United States for the district of Connecticut, passed June 16, 1884, in the case of the Holyoke Water Power Co. against the Connecticut River Co.

That the said Connecticut River Co. shall build coincidentally with the construction of the said dam and appurtenances, at a location to be provided by said corporation and approved by the Secretary of War, and in accordance with plans approved by the Secretary of War and the Chief of Engineers, a lock of such kind and size and with such equipment and appurtenances as shall conveniently and safely accommodate the present and prospective commerce of the river, and when the said lock and appurtenances shall have been completed the said corporations shall convey the same to the United States, free of cost, together with title to such land as may be required for approaches to said lock and such land as may be necessary to the United States for the maintenance and operation thereof, and the United States shall maintain and operate the said lock and appurtenances for the benefit of navigation; and the said corporation shall furnish to the United States, free of charge, water power, or power generated from water power, for operating and lighting the said constructions; and no tolls or charges of any kind shall be imposed or collected for the passage of any boat through the said lock or through any of the locks or canal of said corporation.

That compensation shall be made by the said Connecticut River Co. to all persons or corporations whose lands or other property may be taken, overflowed, or otherwise damaged by the construction, maintenance, and operation of the said dam, lock, and appurtenant and accessory works, in accordance with the laws of the State where such lands or other property may be situated; but the United States shall not be held to have incurred any liability for such damages by the passage of this act.

That upon the termination for any cause whatever of the authority, rights, and privileges granted hereby, or any renewal thereof, the United States may renew the same or the grant may be made or transferred to other parties. Unless the grant is renewed to the original grantee or its assigns, as herein provided, the United States shall pay or require its new grantee to pay to said original grantees or its assigns, as full compensation, the reasonable value of the improvements and appurtenant works constructed under the authority of this act and of the property belonging to said corporation necessary for the development hereby authorized, exclusive of the value of the authority hereby granted. Said improvements and appurtenant works and property shall include the lands and riparian rights acquired for the purposes of such development, the dam and other structures, and also the equipment useful and convenient for the generation of hydroelectric power or hydromechanical power, and the transmission system from generation plant to initial points of distribution, but shall not include any other property whatsoever. Such reasonable value shall be determined by mutual agreement between the Secretary of War and the owners, and, in case they can not agree, then by proceedings instituted in the United States district court for the condemnation of such properties. The basis for determining the value shall be the cost of replacing the structures necessary for the development and transmission of hydroelectric power by other structures capable of developing and transmitting the same amount of marketable power with equal efficiency, allowance being made for deterioration, if any, of the existing structures in estimating such efficiency, together with the fair value of other properties herein defined, to which not more than 10 per cent may be added to compensate for the expenditure of initial cost and experimentation charges and other proper expenditures in the cost of the plant which may not be represented in the replacement valuation herein provided.

That the right to alter, amend, or repeal this provision is hereby expressly reserved.

The PRESIDENT pro tempore. The question is on the amendment submitted by the Senator from Ohio [Mr. BURTON].

Mr. BURTON obtained the floor.

Mr. BANKHEAD. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Alabama?

Mr. BURTON. Yes.

Mr. BANKHEAD. I should like to inquire of the Senator from Ohio about how long he thinks he will discuss this matter?

Mr. BURTON. For not more than 10 minutes.

Mr. BANKHEAD. I desire to raise the point of order against the amendment, and I do not want to be precluded by any proceeding that may come in advance of my doing so.

The PRESIDENT pro tempore. That will be the Senator's right at any time.

Mr. BURTON. Mr. President, this amendment is in the same form, practically, as a bill which was heretofore considered

by the Senate, but in the disposition of which a portion was eliminated by amendment. There are, however, two vital reasons why the amendment I now offer should be adopted, which did not exist when the bill to which I refer was acted on by the Senate. Those two reasons are these: First, the original bill contained, as does this amendment, a provision that a certain charge should be imposed upon the company, and that the fund so created should be used by the United States for the improvement of the Connecticut River. It was maintained by some of the Senators that this was an unlawful exercise of Federal power. There was much discussion on that subject. With equal earnestness it was maintained by some that the provision was entirely valid and by others that it was invalid. This amendment contains a provision, not included in the original bill, which will be found on page 3, beginning with line 5, and reads as follows:

*And provided further*, That if said company shall neglect or refuse to pay any charge or return demanded of said corporation by the Secretary of War, either by order or under any contract, and such neglect or refusal is based on the ground that said charge or return is invalid or unconstitutional and not within the power of Congress to require, such neglect or refusal on the part of the company shall not affect the rights of said company to hold and exercise all the powers, rights, and privileges granted in this act; and in any suit brought against said corporation for the collection of said charge or return, the said corporation shall have the right to enter its proper plea to test the constitutionality or validity of said charge or return, and the courts shall take cognizance of the same.

So much for that. Why should Senators be reluctant to have this question, about which there was so much discussion, submitted to the courts? Most careful provision is made that if the company refuses to pay the proposed charge that shall not interfere with their rights to utilize this water power, but that they may continue to do the business which they are organized to do, and the courts will decide the question of the constitutionality of the charge. Do we not have, Mr. President, some interest in having submitted to the court this question in the discussion of which several days were consumed?

But, still further, others stated that the bill created a precedent which would operate unfavorably in other cases where it was sought to develop water power. To meet their contention this clause has been inserted:

And nothing in this section shall be understood as committing the Government to a policy of imposing or not imposing such charges or returns as are herein described from any other company or corporation seeking the assent of Congress under like or similar circumstances.

Eight or nine members of the Committee on Commerce filed a report in which they stated that they favored the bill and that, except for this clause imposing a charge, they would vote for it, but they regarded that as invalid and as creating an unfavorable precedent. Now, provision is not only made for determining whether or not it is valid or invalid, without interfering with the rights of the company, but there is an express declaration that it shall not be regarded as a precedent.

In the course of my argument several days ago I said, Mr. President, that the conditions here were somewhat exceptional; that this dam was located in the midst of a thickly settled country where there existed a great demand for power. To make sure that in another place where there might be a sparse settlement a similar charge could not be imposed, this amendment expressly provides that this legislation shall not be regarded as a precedent.

Mr. WORKS. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from California?

Mr. BURTON. Yes.

Mr. WORKS. Does the Senator from Ohio really think the corporation would raise that question and involve itself in litigation, while it has the right under the law to collect back from its consumers every dollar of the money that it is required to pay out for such charges?

Mr. BURTON. Mr. President, I argued that question at great length some days ago. The corporation does not have the right to collect every dollar back from its consumers. This provision is inserted here as a safeguard against exorbitant profits. It is expressly provided that the public utilities commission of the State may fix the charge. In actual practice the Federal charge will be imposed, as has been repeatedly pointed out, only after the rate-fixing authority of the State has determined the rates the company may charge, and then only when an undue margin of profit still remains.

I may repeat briefly what I formerly called attention to, that the price of power is determined by competitive conditions; that the greater share of power consumed or used in that locality would be generated by coal; that portion of the power furnished by water would cost much less; and that a public utility commission could not consistently fix one price for power

generated by water and another price for power generated by coal.

The second reason for adopting this amendment, which did not exist when the original bill was up for consideration, is this: We have inserted in the pending bill a provision for a leasing of the power created by a dam between Minneapolis and St. Paul. Under what terms? That the company utilizing that power must pay what? Four per cent interest, not on the total cost of the dam, but on that additional cost, which is necessary to make the dam capable of producing water power; that is, the dam for navigation would cost, say, \$800,000, whilst the dam with the capability of producing water power would cost \$1,400,000; and there is a charge of 4 per cent on that additional \$600,000. We have thereby, if any legislation by Congress establishes a principle, established a rule that the Government, when constructing works for the promotion of navigation, may add to the cost of those works an amount sufficient for the creation of water power, and that it is entitled to compensation on the amount of its investment for the creation of that water power.

Mr. President, what defense could be offered if we should adopt that kind of a proposition and should refuse this? Why, we would be saying that the Government of the United States might spend its own money for the creation of water power and lease that privilege for 4 per cent interest on its investment, but that when a corporation comes to us and offers to build a lock and dam, furnish power, and do everything else necessary for navigation, we refuse it. Does that look like very much care for the interests of the United States? Does that indicate any degree of foresight and of regard for the interests of the Federal Government? It would virtually be saying that this private corporation can not build a lock and dam, but the Government may build the lock and dam and lease it for 4 per cent interest on the cost.

Mr. President, I am not willing, and I do not believe the Senate is willing, to have it said that we will build and turn over to a corporation expensive works at 4 per cent interest, but that we refuse to allow a private corporation, at its own expense, without cost to the Government, to create this very substantial aid to navigation.

The subject has been so long discussed, Mr. President, that I do not desire to prolong my remarks, and I trust that the offering of the amendment will not reopen the controversy which has heretofore consumed so much time. It is in no language of challenge that I say to those on the other side, "You have taken a different view as to the local phases of this question; now, let us submit it to the courts." It is rather as an orderly presentation of the argument and of the statement to the Senate that this is the way, and the only way, to have this question, which must be of such vital importance in the future, settled, and settled beyond controversy.

Mr. BANKHEAD. Mr. President, I desire to make a point of order against this amendment for two reasons: First, it is obnoxious to paragraph 3 of Rule XVI; and, second—

The PRESIDENT pro tempore. Will the Senator kindly read that paragraph?

Mr. BANKHEAD. I ask that the Secretary read it.

The PRESIDENT pro tempore. In the absence of objection, the Secretary will read as requested.

The Secretary read from paragraph 3 of Rule XVI, of the Rules of the Senate, as follows:

3. No amendment which proposes general legislation shall be received to any general appropriation bill, nor shall any amendment not germane or relevant to the subject matter contained in the bill be received.

Mr. BANKHEAD. Again, Mr. President, it is a violation of section 7, Article I, of the Constitution of the United States, which provides:

SEC. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Mr. President, it is perfectly evident, and I do not think it requires an argument to satisfy the Senate, that the purpose of this amendment is to raise revenue. It levies a tax, to be collected through the agency of the Secretary of War, the funds to be paid into the Treasury. Therefore it can not be denied, it seems to me, that it has for its purpose, and for its main purpose, the raising of revenue. To say nothing of that, I insist it is obnoxious to the clause of the rule that has just been read.

Mr. BURTON. Mr. President, a river and harbor bill is not essentially an appropriation bill at all; it is a bill making allowances for different river and harbor works and providing for their construction. In almost every river and harbor bill for 10 years we have had provisions of this nature, to the effect that a privilege shall be granted to construct dams in navigable streams. This bill is full of provisions other than those relating to appropriations. There is a long list of surveys; there is

authority to rent dredges under certain circumstances; and there is authority to receive donations of land. Without the right to insert paragraphs which relate to the construction of locks and dams the improvement of rivers could not proceed without very serious embarrassment. A lock and dam is just as much in the interest of navigation when made by a private party as when made by the Government. Hence that point is not well taken.

The constitutional provision against the origination of bills for raising revenue in the Senate is one which applies where the main object, you might say the sole object, is the raising of revenue. In this case that is not true; it is incidental to the main purpose. It is the granting of a privilege—you can perhaps hardly call it a franchise—but the right is granted to construct a work in aid of navigation, and coupled with that right is a condition that there shall be a certain charge imposed, not for general revenue, but for the improvement of that river and its connecting waters. If the contention of the Senator from Alabama should be correct, you could never frame one of these provisions in the Senate, and he himself knows that that has been very frequently done. If nothing which involved a charge for the privilege could be imposed as a condition, it would be necessary to grant the naked privilege without conditions or reservations.

Mr. SIMMONS. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from North Carolina?

Mr. BURTON. Certainly.

Mr. SIMMONS. I should like to inquire of the Senator if he does not think—and I am asking for information—that the money to be paid to the Government under this amendment would have to go into the Treasury and have to be subsequently drawn out by an appropriation?

Mr. BURTON. Yes; it would have to go into the Treasury.

Mr. SIMMONS. Then, is it not analogous to provisions in the river and harbor bill in relation to contributions on the part of the localities concerned?

Mr. BURTON. It is provided in such cases that the amounts shall be paid into the Treasury.

Mr. SIMMONS. If this money must be paid into the Treasury and appropriated out, how does the Senator distinguish this fund from any other fund belonging to the Government?

Mr. BURTON. Because it is for a special purpose and in connection with the object relating to which the privilege is granted. It is very different, as the Senator from North Carolina will readily recognize, from a provision for general revenue, and, even if that were not the case, it is a mere incident, and would not be obnoxious to the constitutional provision.

Mr. LODGE. Mr. President, the other day when a question was raised upon the amendment of the committee in regard to the Minnesota dam, I had no doubt whatever that the amendment was in order; that it was not general legislation; and the Senate so decided. "General legislation," as affecting this bill, does not mean appropriations for the specific purposes for which this bill is framed. Any appropriation relating to rivers and harbors that has been properly estimated for or that has been reported from a committee is in order. In such a case it is to carry out the purposes of the bill, and it can not possibly be said to be general legislation.

As to the point about raising revenue, it seems to me that that has hardly any weight. The Constitution provides that "all bills for raising revenue shall originate in the House of Representatives." This either is a bill to raise revenue or it is not. I do not think it is a bill raising revenue. It is open to us to put on any amendment we like, even if that amendment carries some fee or compensation. If it is not a bill to raise revenue, of course the point of order does not apply; and if it is a bill to raise revenue, then we have the right to amend it, expressly given by the Constitution. It must be one or the other.

Mr. BRANDEGEE. Mr. President—

The PRESIDENT pro tempore. The Chair will be pleased to hear very briefly on the point of order.

Mr. BRANDEGEE. Mr. President, I desire to put into the RECORD a brief extract from the discussion which took place upon this very point in relation to the Municipal Electric Co. amendment in connection with the dam on the Mississippi River. It appears on page 3593 of the RECORD, under date of February 20, 1913, and is as follows:

Mr. THOMAS. \* \* \* My attention has been called to section 3 of Rule XVI as bearing upon this amendment, from which I will read: "No amendment which proposes general legislation shall be received to any general appropriation bill."

This amendment certainly proposes general legislation. I therefore make the point of order that it is obnoxious to section 3 of Rule XVI of the Rules of Procedure of the Senate.

Mr. NELSON. Mr. President, on the point of order, this is a special case that follows the appropriation for the dam. That appropriation of \$185,000 is for this dam, and the amendment relates simply to this particular dam. It is not of a general character. It is not general legislation.

Mr. NEWLANDS. Mr. President, I should like to ask the Senator from Ohio [Mr. BURTON] whether it has not been customary to insert legislation of this kind in river and harbor bills? Is not the river and harbor bill regarded not simply as an appropriation bill, but a bill providing authority for surveys, etc., and also appropriating money for projects?

Mr. BURTON. Mr. President, I do not think any discussion has arisen on that subject in the Senate. In the House it is regarded as a quasi appropriation bill, and material relating to public works and rivers and harbors is considered in order. That is, it is not regarded as strictly an appropriation bill and governed by the rules which pertain to appropriation bills.

Mr. NEWLANDS. I remember hearing the Senator make that statement at the committee meeting the other day when the question arose.

Mr. BURTON. That is certainly the rule in the House. It is not regarded as absolutely confined within the limits which pertain to an appropriation bill, as it will appear that the modification of projects or provisions relating to associated projects are subjects which could not well be disposed of except in this bill. For that reason the rule has been established that it is not limited by the strict rules pertaining to appropriation bills, at least in the House.

Then the discussion goes on. Finally the Chair submitted the question to the Senate, and upon page 3594 of the RECORD the President pro tempore said:

The Chair submitted it to the Senate, and it was decided that it was in order.

Now, Mr. President, this is exactly that same case. This is a permit authorizing the maintenance of a particular dam at a point in a river, and it can not be said in any respect to be "general legislation."

As to the point of order that it is "a bill for raising revenue" under the language of the Constitution, it seems to me that that claim can not seriously be made.

Section 7, Article I, of the Constitution provides:

All bills for raising revenue shall originate in the House of Representatives—

And so forth.

To say that an amendment to a river and harbor bill, which issues a permit to maintain a dam, is a bill for the purpose of raising revenue, of course, is far-fetched and absurd. I hope the Chair will overrule the point of order.

Mr. SMOOT. Mr. President, the Senator from Ohio [Mr. BURTON], as I understood him, made the statement that the river and harbor bill is not a general appropriation bill.

Mr. BURTON. Certainly; it is not.

Mr. SMOOT. I simply rise, Mr. President, to state that I understand that it is considered in the Senate to be a general appropriation bill. If I am wrong in that statement, I should like to have the Chair correct me.

Mr. BRANDEGEE. The bill states on its face that it is "A bill making appropriations for \* \* \* rivers and harbors, and for other purposes."

Mr. SMOOT. Certainly; but it is considered, and always has been considered in the Senate of the United States, a general appropriation bill.

The PRESIDENT pro tempore. The Chair will deal with that matter in attempting to decide this question.

Mr. BANKHEAD. I should like to read, Mr. President, paragraph 1 of Rule XVI with reference to appropriation bills:

All general appropriation bills shall be referred to the Committee on Appropriations, except the following bills, which shall be severally referred as herein indicated, namely: The bill making appropriations for rivers and harbors—

And so forth.

If that does not make it a general appropriation bill I do not understand the rule.

Mr. BRANDEGEE. Mr. President, there is no relevancy whatever to the point of order as to whether or not it is a general appropriation bill. The point is that, even if it is a general appropriation bill, the amendment proposed is not general legislation.

The PRESIDENT pro tempore. The Senator from Alabama [Mr. BANKHEAD] makes a point of order against the amendment on two grounds: First, that it is general legislation on an appropriation bill according to Rule XVI; and second, that it is obnoxious to the provision of the Constitution of the United States, that "bills for raising revenue shall originate in the House of Representatives." The Chair does not consider it his function to decide a constitutional question, whatever his views on that point may be, but will confine himself to dealing with the point the Senator from Alabama makes, that the amendment proposes general legislation.

Mr. NELSON. Mr. President, there was another point made by him, and that was that the amendment is not germane.

The PRESIDENT pro tempore. The Chair did not hear that point.

Mr. BANKHEAD. Yes; I included that, Mr. President, in my point of order.

Mr. BURTON. Mr. President, if there is to be any discussion—

The PRESIDENT pro tempore. The Chair can not be interrupted just at this point. The Senator from Connecticut [Mr. BRANDEGEE] has read briefly the proceedings that occurred a few days ago on the amendment relating to the Mississippi River dam, and has shown by the CONGRESSIONAL RECORD that the Chair submitted that question to the Senate and that the Senate decided that the amendment was in order, and so decided, the Chair may well say, on a decisive vote, the yeas and nays being refused when they were demanded. During that debate several Senators whose opinions are entitled to great weight made declarations along this line. The Senator from Colorado [Mr. THOMAS] said:

I think it involves—

That is the Mississippi River dam project—

I think it involves to a very large extent the same conditions which were adopted by a majority of the Senate in the Connecticut River bill.

The Senator from New York [Mr. O'GORMAN] said:

But I have this to remark: If the Senate adopts this amendment, it should reconsider its action respecting the Connecticut dam bill, upon which we voted a few days ago.

The Senator from Idaho [Mr. BORAH] observed:

There is a difference so far as the physical facts are concerned; but there is no difference, to my mind, between the principle which is involved in this amendment and the one which was involved in the Connecticut dam bill.

There may have been somewhat similar utterances by other Senators, but the Chair simply turned to those three expressions on the part of Senators who have looked into this matter very carefully.

In view of the fact that the amendment relating to the dam on the Mississippi River was submitted to the Senate, and by a decisive vote was held to be in order, and in view of the further fact of the utterances that were made to the effect that these two amendments were on all fours, the Chair overrules the point of order.

Mr. BANKHEAD. Mr. President, I make the point of order that the amendment is not germane or relevant to the bill.

The PRESIDENT pro tempore. Under the rules, that point of order must necessarily be submitted to the Senate.

Mr. BURTON. Mr. President, I wish to be heard briefly on that matter. This follows a provision for the improvement of the Connecticut River. It is in pursuance of a survey and report made under the order of Congress, in which report this improvement is favorably regarded; but it is stated that the expense due to the development of water power, unless there is participation, should not be undertaken.

The PRESIDENT pro tempore. The Chair will suggest to the Senator from Ohio that it is not within the province of the Chair to decide the point of order now raised, the rules providing specifically that it shall be submitted to the Senate.

Mr. BORAH. Mr. President, I am sorry the Senator from Alabama [Mr. BANKHEAD] raises this question in this way. There can be no doubt but that this amendment is relevant and germane upon the same principle as the amendment which we adopted a few days ago. While I am opposed to both of them, I do not desire to be placed in the position of voting for this amendment when I vote in favor of the proposition that it is relevant or germane to the bill. We ought to vote upon it directly as to whether we want it on the bill or not. Senators who voted for the amendment a few days ago ought either to vote for this or to vote against it. It involves precisely the same principle. If the Senate is ready to reverse its action, let us reverse it now, and establish this precedent and put it in this bill.

Mr. NELSON. Mr. President, the Senator from Idaho is utterly mistaken. It is not the same principle. The dam on the Mississippi River at Minneapolis was a dam built by the Federal Government with its own money, in the interest of navigation, and it was only incidentally that the power was created. This dam on the Connecticut River is not to be built by the Federal Government. It is to be built by a private company with its own money, and the Federal Government has not a dollar invested. That is the great difference between the two cases.

Mr. BORAH. Mr. President, that difference is no difference at all so far as the legal principle is concerned. It can not make a particle of difference, as far as the legal principle involved is concerned, whether the National Government builds the dam or whether private individuals are going to build it. When we come to analyze it, in its last analysis, the principle is precisely the same. The physical facts are different, but the power of the National Government over the power created is the same.

The PRESIDENT pro tempore. If the Senator from Idaho will permit the Chair, according to the rules of the Senate the point of order now made, that this amendment is not relevant, must be decided without debate. The Chair will submit to the Senate the question as to the relevancy of the amendment.

Mr. BANKHEAD. Mr. President, I ask unanimous consent to proceed for a moment.

The PRESIDENT pro tempore. The Senator from Alabama asks unanimous consent to make a statement. Is there objection? The Chair hears none, and the Senator will proceed.

Mr. BANKHEAD. After further consideration of this question, I believe—

Mr. LODGE. Mr. President, this is a most extraordinary procedure. The Senator from Idaho has just been taken off the floor on the ground that the matter is not debatable, and then another Senator is permitted to occupy the floor.

Mr. BANKHEAD. I thought I had the consent of the Senate, including the Senator from Idaho, to make a statement.

Mr. LODGE. It is a most extraordinary procedure.

Mr. BANKHEAD. Mr. President, with the hope that it might facilitate the disposition of these matters, I asked that the Senate would bear with me for a minute. Have I unanimous consent to proceed for, say, two minutes?

The PRESIDENT pro tempore. The Chair put the question, and there was no objection to the Senator's proceeding briefly.

Mr. BANKHEAD. Mr. President, as I said, after further consideration I believe I will withdraw my point of order. I am willing to have the Senate vote on this question. It has gone on record once, and I am willing that it should go on record again. In withdrawing my point of order I desire to offer a substitute for the amendment offered by the Senator from Ohio, which is the bill as it passed the Senate a few days ago.

Mr. BRANDEGEE. I object to the withdrawal of the point of order.

The PRESIDENT pro tempore. The Chair thinks it would not be competent for a Senator to object to the withdrawal of a point of order.

Mr. BRANDEGEE. Then, Mr. President, I renew the point of order myself.

The PRESIDENT pro tempore. The Senator from Connecticut renews the point of order. The question is—

Mr. BORAH. What is the point of order?

The PRESIDENT pro tempore. The point of order is that the amendment is not germane to the bill.

Mr. BRANDEGEE. I hope the Senate will decide that it is germane. I do not want a vote on the amendment which the Senator from Alabama proposes to offer as a substitute for the amendment proposed by the Senator from Ohio.

Mr. BANKHEAD. We are about to get this matter rather complicated, it seems to me. As I understand, objection is made to my withdrawing the point of order.

Mr. BRANDEGEE. I hope the Senator will withdraw his amendment and let the vote come on the amendment proposed by the Senator from Ohio.

Mr. BANKHEAD. I do not propose to be dictated to.

Mr. BRANDEGEE. Neither do I.

Mr. JONES. Mr. President, I rise to a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator from Washington will state it.

Mr. JONES. Suppose, in passing upon the point of order raised by the Senator from Connecticut, the Senate should declare that the amendment is germane; would not a substitute then be in order?

The PRESIDENT pro tempore. Certainly so.

Mr. BRANDEGEE. It can then be offered.

Mr. BANKHEAD. I will withdraw my amendment, then, until the other question is disposed of.

The PRESIDENT pro tempore. The question is, Is the proposed amendment germane to the bill? [Putting the question.] By the sound the ayes have it. The ayes have it, and it is decided that the amendment is germane.

Mr. BANKHEAD. Mr. President—

The PRESIDENT pro tempore. The question now is—

Mr. BANKHEAD. Mr. President—

The PRESIDENT pro tempore. The Chair will recognize the Senator from Alabama in a moment. The question is upon the amendment submitted by the Senator from Ohio [Mr. BURTON]. The Senator from Alabama is now recognized.

Mr. BANKHEAD. Mr. President, did I understand the Chair to decide that a majority of the Senate had voted that the amendment was relevant?

The PRESIDENT pro tempore. The Chair decided that, by the sound, the ayes had it.

Mr. BANKHEAD. I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. SHEPPARD (when Mr. CULBERSON's name was called). My colleague is absent on business of the Senate. He is paired with the Senator from Delaware [Mr. DU PONT].

Mr. CULLOM (when his name was called). I have a general pair with the junior Senator from West Virginia [Mr. CHILTON]. In his absence, I withhold my vote.

Mr. NELSON (when his name was called). I have a pair with the senior Senator from Georgia [Mr. BACON]. On that account I withhold my vote.

Mr. PAYNTER (when his name was called). I will ask whether the senior Senator from Colorado [Mr. GUGGENHEIM] has voted?

The PRESIDENT pro tempore. The Chair is informed that that Senator has not voted.

Mr. PAYNTER. Having a general pair with that Senator, I withhold my vote.

Mr. SMITH of Georgia (when his name was called). I desire to state that the senior Senator from Georgia [Mr. BACON] is detained in his room by sickness.

Mr. SMITH of Michigan (when his name was called). I have a pair with the junior Senator from Missouri [Mr. REED], and in his absence I withhold my vote. If I were at liberty to vote on the point of order, I should vote "yea."

Mr. WARREN (when his name was called). I have a general pair with the senior Senator from Louisiana [Mr. FOSTER]. I will ask if he has voted?

The PRESIDENT pro tempore. The Chair is informed that that Senator has not voted.

Mr. WARREN. Then I withhold my vote.

Mr. WILLIAMS (when his name was called). I wish to inquire if the senior Senator from Pennsylvania [Mr. PENROSE] has voted?

The PRESIDENT pro tempore. The Chair is informed that that Senator has not voted.

Mr. WILLIAMS. I have a pair with the Senator from Pennsylvania; and not knowing how he would vote, I withhold my vote.

The roll call was concluded.

Mr. BRADLEY (after having voted in the negative). I withdraw my vote, in view of the fact that the Senator from Indiana [Mr. KERN] is not present.

Mr. CULBERSON. I wish to inquire if the Senator from Delaware [Mr. DU PONT] has voted?

The PRESIDENT pro tempore. The Chair is informed that that Senator has not voted.

Mr. CULBERSON. As I have a general pair with him, I withhold my vote.

Mr. LODGE. I desire to announce that my colleague [Mr. CRANE] is paired with the senior Senator from Maryland [Mr. SMITH].

The result was announced—yeas 38, nays 29, as follows:

## YEAS—38.

|             |             |                |              |
|-------------|-------------|----------------|--------------|
| Borah       | Dillingham  | Lodge          | Pomerene     |
| Brandeggee  | Fall        | McCumber       | Richardson   |
| Briggs      | Gallinger   | McLean         | Root         |
| Bristow     | Gamble      | Martine, N. J. | Smith, Ariz. |
| Burnham     | Gardner     | Myers          | Smoot        |
| Burton      | Hitchcock   | Newlands       | Sutherland   |
| Carson      | Jackson     | Oliver         | Townsend     |
| Clark, Wyo. | Kenyon      | Page           | Wetmore      |
| Crawford    | La Follette | Perkins        |              |
| Cummins     | Lippitt     | Pittman        |              |

## NAYS—29.

|                |             |              |          |
|----------------|-------------|--------------|----------|
| Bankhead       | Jones       | Sheppard     | Thornton |
| Bourne         | Kavanaugh   | Shively      | Tillman  |
| Chamberlain    | Lea         | Smith, Ga.   | Watson   |
| Clarke, Ark.   | Martin, Va. | Smith, S. C. | Webb     |
| Fletcher       | O'Gorman    | Stephenson   | Works    |
| Gronna         | Overman     | Stone        |          |
| Johnson, Me.   | Owen        | Swanson      |          |
| Johnston, Ala. | Percy       | Thomas       |          |

## NOT VOTING—28.

|         |            |            |              |
|---------|------------|------------|--------------|
| Ashurst | Clapp      | Foster     | Poindexter   |
| Bacon   | Crane      | Gore       | Reed         |
| Bradley | Culbertson | Guggenheim | Simmons      |
| Brady   | Cullom     | Kern       | Smith, Md.   |
| Brown   | Curtis     | Nelson     | Smith, Mich. |
| Bryan   | Dixon      | Paynter    | Warren       |
| Chilton | du Pont    | Penrose    | Williams     |

The PRESIDENT pro tempore. The Senate decides that the amendment is germane to the bill. The question is upon the amendment submitted by the Senator from Ohio [Mr. BURTON].

Mr. JONES. Mr. President, I desire to offer as a substitute the bill as it passed the Senate a few days ago. I am offering it exactly as it passed the Senate, and therefore I suggest that it will not be necessary to read it.

The PRESIDENT pro tempore. Without objection, the reading will be dispensed with.

Mr. BRANDEGEE. May I ask the Senator a question? That is exactly what the Senator from Alabama [Mr. BANKHEAD] just attempted to do, and then he withdrew it. Inasmuch as my colleague is going to do that after the amendment

of the Senator from Ohio has been acted upon, I will ask the Senator if he will not withdraw it?

Mr. JONES. I think this ought to be done right here. I do not see why it should not be done.

Mr. BRANDEGEE. Very well.

Mr. JONES. It will come in as a substitute. It is exactly the action of the Senate the other day.

The PRESIDENT pro tempore. The Senator from Washington offers a substitute for the amendment submitted by the Senator from Ohio, and the question is upon that substitute.

Mr. SWANSON. Mr. President, I should like to inquire if that is not the bill that passed the Senate the other day without complying with the views of the President in connection with the granting of water power? As I understand, the President has repeatedly vetoed all bills granting the privilege of crossing rivers unless they provided for a tax. If this is put upon the river and harbor bill, as suggested by the Senator from Washington, with the present views of the President, it seems to me it will jeopardize the bill. If it is added on to the bill it will go to the President; and the President, as I understand, has specifically stated that unless bills granting the privilege of constructing dams provide for a tax by the Federal Government, he will not sign them. It seems to me if it is the purpose of the Senator from Washington to kill this bill, it can be very easily accomplished in that way.

Mr. JONES. Mr. President, I desire to say that it is not the purpose of the Senator from Washington to kill this bill, but the Senator from Washington does not propose to be coerced to adopt some proposition simply by some alleged action that may be taken by some other department of the Government. This is a proposition that the Senate passed upon the other day, upon the very matter that the Senator from Ohio has presented to the Senate now, and it is simply a question with me whether or not the Senate will reverse itself on that action.

Mr. SWANSON. Mr. President, of course I do not desire to have our river and harbor improvements jeopardized either by an effort on the part of Congress to coerce the President or by an effort on the part of the President to coerce Congress. But if it is the declared policy of the President that bills granting the right to construct dams will not be signed by him unless they contain a provision for a tax, and that is his honest conviction, I am not willing to vote to add a provision of this kind to a river and harbor bill to try to force him to give up his convictions and jeopardize the bill in that way.

Mr. SMITH of Georgia. Why is not the proper course to stop offering all this extra legislation and send the appropriation bill on, eliminating this additional legislation from it?

Mr. SWANSON. Mr. President, there are large enterprises and large business involved in these river and harbor improvements, and it seems to me that to take the chance of jeopardizing or destroying the bill or making it useless simply to try to have an issue on legislation between the legislative and the executive branches of the Government is not the ordinary and orderly and proper way to conduct business. It would give the President an opportunity to veto the river and harbor bill. The Senate has expressed its conviction on this other bill and has sent it to the House of Representatives, and it can go to the President as an independent proposition. But as the President has specifically said that he will not give his approval to propositions of this kind that do not give the Federal Government the power to tax, it seems to me, to put this amendment on the bill will have a tendency, whether that is the purpose or not, to destroy the bill and prevent its passage.

Mr. SMITH of Michigan. Mr. President, the Senator from Virginia [Mr. SWANSON] has expressed some apprehensions about the final enactment into law of this bill. I think his apprehensions are well founded, not so much from fear of the action of the executive department as from the delay that has kept this bill back from day to day. As one of those who assisted in its preparation, and as one who is interested in its passage, I think the bill is upon very dangerous ground this morning.

Mr. SWANSON. Mr. President, I hope the lecture that the Senator from Michigan has delivered to the other side of the Chamber will be properly obeyed, respected, and followed. The responsibility for reporting bills and the responsibility for delay so far as the Senate is concerned is with the majority, and it comes in poor taste from him to endeavor to lecture this side of the Chamber for any delay.

Mr. SMITH of Michigan. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Virginia yield to the Senator from Michigan?

Mr. SWANSON. I do.

Mr. SMITH of Michigan. I do not see how the Senator from Virginia could get the impression that I was lecturing that side of the Chamber. I simply agreed with him that the cir-

cumstances, and the short time that we now have before this Congress expires, admonish us that if this bill is to become a law we must restrain ourselves with the amendments that are being proposed, and get some action upon the bill. I am not lecturing that side. I do not think that side is responsible as much as is this side.

Mr. SWANSON. I appreciate the position of the Senator from Michigan. I know there has been nobody on this side of the Chamber who has tried to delay any appropriation bill or who has tried to delay any legislation that is necessary to run this Government. I think the effort to identify this bill with a conflict between the legislative and the executive departments of this Government is wrong; I think it is improper. The amendment should be voted down if we desire to have this legislation, which is so necessary for all sections of this country.

Mr. WILLIAMS. Mr. President, I sincerely hope that Senators will not permit the river and harbor appropriation bill for this year to be mixed up in any way with this Connecticut River dam bill. I earnestly hope the substitute will be voted down, because if it is made a part of the bill it will jeopardize the final passage of the bill and its final signing. Then I hope by a majority equally large the Senate will vote down the amendment of the Senator from Ohio [Mr. BURTON].

Mr. JONES. Mr. President—

Mr. WILLIAMS. So that this question shall not become a part and parcel of the general river and harbor legislation.

Mr. JONES. Mr. President, I think I can save time—

Mr. WILLIAMS. One moment. I have given my reason for wanting to vote down the substitute—it will jeopardize the bill. My reason for wanting to vote down the amendment of the Senator from Ohio is that it is an attempt in an indirect way to set aside the deliberate judgment of the Senate upon the bill as it passed the Senate. It is an attempt, by tacking it onto something else, to reverse, apparently, the opinion of the Senate upon a question which it considered, debated, and decided. It does seem to me that after Senators have thrashed out this little Connecticut dam bill upon the floor of the Senate, and after the Senate has decided it according to its judgment, right or wrong, they ought to be satisfied and not attempt to embarrass the river and harbor bill with it.

Mr. JONES. Mr. President—

Mr. WILLIAMS. I now yield to the Senator from Washington.

Mr. JONES. In the interest of saving time, and in the interest of legislation that we hope to pass that is down on the calendar after this bill, and in the belief that the Senate will keep this whole proposition out of this bill, I will withdraw my amendment.

The PRESIDENT pro tempore. The amendment offered by the Senator from Washington is withdrawn.

Mr. BURTON. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Mississippi yield to the Senator from Ohio?

Mr. WILLIAMS. I do.

Mr. BURTON. Will the Senator from Mississippi state whether he has read the amendment added to the bill as it was originally introduced, leaving to the courts to determine—

Mr. WILLIAMS. I heard the Senator from Ohio make the statement that the bill was precisely the bill as originally introduced, with two exceptions, which he explained, and which he explained very thoroughly.

Mr. BURTON. Is it not true that those exceptions make a very vital difference?

Mr. WILLIAMS. I listened very attentively, and I did not see that they made any vital difference. I do not see it yet. This amendment will make such a difference. The Senator said this would not be a precedent, because he provides in one of these provisions that it shall not be a precedent. You can not keep a thing from being a precedent by saying when you do it that it shall not be a precedent. The objections of those men who do object to it is not removed by the fact that you do what they voted against doing, although you say it shall not be a precedent.

Mr. BURTON. Mr. President, if the Senator from Mississippi will yield to me for a moment, more substantial than that is the setting forth, as was done in our case, of the difference between this proposition and the ordinary proposition. I should like to ask the Senator from Mississippi if he voted for the provision relating to the dam between Minneapolis and St. Paul?

Mr. WILLIAMS. I do not remember, but there is this distinction that I think the Senator is arriving at, about which I agree with him. I agree with the Senator from Minnesota. I disagree with the Senator from Idaho. I think that where the Government erects a dam for the purposes of navigation, paying out the people's money for the construction of the dam, and there incidentally arises a source of revenue, whether from the

water power or what not, it is right and proper that the Government should to that extent reimburse itself for its expenditure, because the people have paid for the dam and the people will get the benefit of the reimbursement. I agree with the Senator from Minnesota about that.

But I think that is a different proposition from granting to a private corporation these rights and fixing a tax upon the use of the water power, so that the corporation can extend the tax to the consumer. It has been said that a public utilities commission would have the right, anyhow, to fix the rate, but when they have the right to fix the rate they consider, and must consider, and ought to consider, the various elements of cost which enter into the operation; and they would undoubtedly consider the tax as a part of the annual burden upon the corporation which was dispensing the light or power.

But I do not want to be diverted from my main object. On this question I want to express no opinion; I did not want to do that; I have been drawn into it. My main object is that the river and harbor bill shall not be embarrassed and mixed up with this Connecticut River dam bill at all. For Heaven's sake, with all these great magnitudinous interests at stake all over the country, do not deflect us from the purpose of getting this bill through the two Houses as soon as possible, so that it may go to the President as soon as possible and become a law as soon as possible. We are already approaching the 4th of March, and the two Houses were never so far behind in their general business as they are now. I do not want to see this great bill encumbered with any more provisions than are absolutely necessary to the great work of the maintenance and the improvement of the navigable waters of the United States.

Mr. BORAH. I wish to ask the Senator from Ohio if it is his intention to withdraw his amendment?

Mr. BURTON. Oh, no; by no means.

Mr. BORAH. Permit me to say, then, if we want to expedite the passage of the bill into a law both these propositions will have to go out of the bill together.

Mr. WILLIAMS. The substitute has been withdrawn by the Senator from Washington [Mr. JONES].

Mr. BORAH. The amendment will have to go out, in my judgment, or it will provoke a long debate.

Mr. WILLIAMS. Let us vote the amendment down.

Mr. BORAH. The precedent has already been established in the bill, and if we are going to strip the bill we must strip it entirely of these propositions.

Mr. BRANDEGEE. Will the Senator yield to me for a moment?

Mr. BORAH. I yield.

Mr. BRANDEGEE. Will the Senator please give me a candid opinion upon this question: Why should not the Connecticut River be treated as fairly by the Senate as the Mississippi River? Why is not this permit authorizing a dam across the Connecticut River just as proper upon this bill as the amendment which was put on by the Committee on Commerce in relation to the Minneapolis and St. Paul water power?

Mr. WILLIAMS. Mr. President, the Senator from Connecticut misunderstands me.

Mr. BRANDEGEE. I ask the Senator from Idaho that question.

Mr. WILLIAMS. Will the Senator from Idaho yield to me for just a second?

Mr. BORAH. I yield to the Senator.

Mr. WILLIAMS. If the Senator from Connecticut has asked a question of me, he misunderstands my position.

Mr. BRANDEGEE. No; I did not. I expressly disavow asking the Senator anything.

Mr. WILLIAMS. Very well. Then, with the permission of the Senator from Idaho, I will state where I see the difference. You had just as much right to have the project here as to have the Minneapolis Dam project here. You are entitled to just exactly the same treatment before the Senate that the Mississippi River is in kind, though not in degree.

But that is not the question. The Senate has passed upon your proposition. It heard it fully argued day after day. It decided against it, and I submit that it is not right to bring it up again for a second decision to the embarrassment of other legislation.

Mr. BRANDEGEE. I do not see that this will embarrass anything. If the Senate does not put on the amendment of the Senator from Ohio and shall put it on the very amendment which we have already voted in as a separate bill, I do not consider that it would embarrass the Senate or the bill. The only thing that is embarrassing the Senate now is the unlimited debate on this question, which ought to be settled in two minutes.

Mr. NEWLANDS. I ask the Senator from Idaho to allow me to say just one word to the Senator from Connecticut which

I think will help to solve this question, if I can have the attention of the Senator from Connecticut.

The PRESIDENT pro tempore. Does the Senator from Idaho yield to the Senator from Nevada?

Mr. BORAH. I will yield to the Senator.

Mr. NEWLANDS. I ask whether it would not be a very reasonable solution of this question and one that would command probably the unanimous consent of this body if the Senator from Connecticut would put the structure on the Connecticut River upon the same basis as that of the Senator from Minnesota on the Mississippi River?

The two projects, I understand, involve about the same expenditure, namely, \$5,000,000 each. Under the project of the Senator from Minnesota the work is to be done by the National Government. That work is devoted partially to a State use, and for that State use only 4 per cent is paid to the National Government, making a charge upon the consumers of only 4 per cent on \$5,000,000, or \$200,000 a year. Now, under the proposed amendment of the Senator from Connecticut—

Mr. BURTON. Will the Senator from Nevada yield to me for a moment?

Mr. NEWLANDS. Let me complete my statement. Under the proposal of the Senator from Connecticut the structure is put up by a private corporation, which is acting as the agent of the National Government, so far as the navigable feature is concerned. That agent proposes to charge to consumers 8 per cent upon \$5,000,000, making a total charge imposed upon the consumers of the Connecticut River power of more than \$400,000 annually, whereas only \$200,000 annually is imposed upon the consumers by the Minnesota project. Both involve the same capitalization.

I ask the Senator why we can not change the character of the appropriation in the Connecticut River project and provide that it shall be paid for just as any such project is, by the National Government, which will thus absolutely control all structures in the stream and provide that the Connecticut corporation shall pay the National Government 4 per cent upon that, thus reducing the cost to consumers from \$400,000 to \$200,000?

Mr. BRANDEGEE. Will the Senator from Idaho yield to me to answer the question?

Mr. BORAH. I yield to the Senator from Connecticut.

Mr. BRANDEGEE. I do not ask it as a privilege on my account, but the Senator has asked me a question.

Mr. NEWLANDS. I have asked the Senator that question.

Mr. BRANDEGEE. Of course, the Senator's theory would be well enough if that was the original proposition, but we must understand that the gentlemen who have been trying to get this permit are in the process of making their financial arrangements for the construction on the basis upon which it has been started; that there is already existing a company there with rights chartered by the State of Connecticut, and the Government would have to go in and condemn that property and pay a large price and go into the business itself of making a dam. I do not ask the Government to do that.

I do not want to delay in answering the Senator any further, but I will say this, Mr. President: The Minnesota proposition and the Mississippi River proposition seem to be very dear to the hearts of the Senators who live in that section. Connecticut unfortunately has no representative upon the Committee on Commerce of this body. What I want is fair play of the Senate and a square deal.

I will say this, that if the Mississippi River is to have one sort of treatment and the Connecticut River not as fair a sort of treatment no haste will be made in the progress of this bill through the Senate, and when the bill is reported to the Senate there will be a proposition to have a separate vote upon the Mississippi River improvement, unless the Connecticut River can get fair treatment.

Mr. WARREN. Mr. President—

The PRESIDENT pro tempore. The Senator from Idaho has the floor.

Mr. WARREN. I will ask the Senator from Idaho to yield to me for a moment.

Mr. BORAH. If I may say just a word I will yield the floor.

Mr. CLARKE of Arkansas. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Idaho yield to the Senator from Arkansas?

Mr. BORAH. I yield.

Mr. CLARKE of Arkansas. I want the permission of my friend from Idaho to ask the Senator from Connecticut just one question.

Mr. BORAH. I will yield.

Mr. CLARKE of Arkansas. Is it not a fact that the Connecticut River bill has passed the Senate and is now pending in

another branch of Congress? Why is it necessary to vote upon the same bill a second time when you know it will be confronted with a hostile Executive?

Mr. BRANDEGEE. It has not passed the Senate in the form the Senator from Ohio offered it.

Mr. CLARKE of Arkansas. I am talking about the form in which it is offered by the junior Senator from Connecticut.

Mr. BRANDEGEE. That is not now pending. That may be offered in the future, and then the Senator can make any point he has a mind to.

Mr. CLARKE of Arkansas. I am not making any point except that we are consuming time upon a measure which has already passed.

Mr. BRANDEGEE. The only reason why we are consuming time is because Senators insist on talking instead of voting.

Mr. BORAH. Mr. President, when the request was first made in the Senate to bring up the Connecticut River bill, as the RECORD discloses, I objected to it at the time, for the reason I stated, that it involved a proposition of such wide-reaching moment that we ought not to try to dispose of it at this session. It is a matter in which we are vitally concerned throughout the West and it ought to be a matter of vital concern throughout the country. Now, we are attempting to settle it by piecemeal in this bill.

It does not make any difference whether the substitute is offered and adopted, or whether the amendment offered by the Senator from Ohio is adopted, it will jeopardize this bill. Not only that, but the amendment which has been offered and adopted covering the Minnesota suggestion will jeopardize the bill.

The only way in which we can pass this bill as a river and harbor bill is to pass it as a river and harbor bill and not undertake to settle the question as to what we shall do with these power sites.

We may be all wrong about our view of the matter, but in view of the fact that we have some ideas in regard to it we do not desire to be cut off by trying to settle it in a bill in which all Senators have matters of local interest. We should settle this matter of power sites in a general bill. If the Minnesota proposition had been submitted by itself, it could not have passed the Senate. It passed the Senate because it was tied up with the river and harbor bill. The only mistake the Senator from Connecticut made was in not offering his amendment to the river and harbor bill. It would have gone through.

Mr. BRANDEGEE. But I was not on the committee.

Mr. BORAH. The Senator from Connecticut had no reason to believe at that time that the Senate of the United States would reverse itself in order to pass a river and harbor bill.

Mr. WARREN. Mr. President, I do not want to enter into the merits of this particular project, but I shall soon move to test the feeling of the Senate to take some other bill if we are to continue this kind of delay. We have now nine appropriation bills, including the public-buildings bill and the one now being discussed, that must be finished this week. Some of the bills have hundreds of disputed items in them, and it is a tortuous route to handle them here on the Senate floor and later on in conference. It must be patent to everybody that we have got to get these great supply bills into conference in the next two or three days or they are going to fail.

I do not like to scold; I am not going to scold; but I think the Senate ought to understand the precarious position we are in. The various Senate committees on appropriations have been diligent; they have worked night and day; the bills are here on the calendar ready to be taken up. We must curb this superabundance of talk or we are not going to get through the annual supply bills.

We have also a unanimous-consent agreement to take up another very interesting measure, subject to appropriation bills, and those in charge of the appropriation bills do not like to press them against this unanimous-consent agreement.

Mr. LA FOLLETTE. Mr. President—

Mr. WARREN. I have only a word more, and then I will yield. I simply want to lay before the Senate this condition in justice to the several committees on appropriations. They must have quick work or they must lie down and let these bills go over to another session.

Mr. LA FOLLETTE. Mr. President, the passage of the appropriation bills, of course, is important, but by unanimous consent the Senate held out the hope to those who are interested in the bill for the valuation of the railroad property of the country that it might be considered and passed to-day. It was expected at that time that the river and harbor bill would have been disposed of, but the debate has been protracted.

Mr. President, I acquiesce in all that the Senator from Wyoming [Mr. WARREN] says about the appropriation bills, the

tremendous labors that the committees having charge of those bills have put upon them, and the great importance of their passage at this session. But, Mr. President, I want to say now, and I do not believe my view of it is warped or twisted by having it pretty steadily before me for many years, that the valuation of the railroad property of this country is more important than the passage of all the appropriation bills. Had the value of the railroad property of this country been taken seven years ago, when I first presented it to the Senate and the Senate for the first time made a record upon it, it would have proved a saving of \$400,000,000 annually to the people of this country.

Mr. President, if we can be accorded the opportunity of considering the valuation bill this afternoon, much as I would like to take the time of the Senate in submitting some observations upon it, I shall be very glad to have it passed with the reading of the bill and the report that accompanies it. But, Mr. President, if this day is consumed with consideration of these appropriation bills and the passage of this bill is blocked, I want to say to the Senate, and I say it meaning every word, that some of these appropriation bills will be passed by another Congress. If it is in my power to secure it, the Senate will consider and act upon the bill providing for the valuation of railroad property at this session. I am sure a majority of the Senate want to do it, and I am going to be insistent upon it. I have taken scarcely any of the time of the session in debate upon any measures, and I sincerely hope that Senators will feel the importance of permitting votes to be taken without much discussion. There is no opportunity for it now upon any of these great bills; they have either to be passed, coming in as they do at this late hour, upon the reports of the committees or they are not going to pass at all.

Mr. LODGE. Mr. President, I voted for the Connecticut River bill in its original form and also as it passed the Senate. I voted for it in its original form because I was in sympathy with the policy embodied in the conservation clause, so called. I voted for the Minnesota dam proposition because it seemed to me to embody precisely the same principle. Like the Senator from Idaho [Mr. BORAH], I am utterly unable to see any distinction in the principle between the two, and I voted cheerfully for both.

Now, Mr. President, it is proposed to leave in the Minnesota bill and not allow the Connecticut River bill to go on, even without the objectionable conservation clause; it is proposed to keep it off. The only distinction seems to me to be that one is in Connecticut while the other is in the Valley of the Mississippi. Mr. President, I can say frankly that it does not seem to me that it is fair treatment, and if there is to be a distinction made it will not hasten the progress of the bill.

Mr. McLEAN. Mr. President, I shall not occupy more than two minutes of the time of the Senate, but I want to call the attention of the Senate to one point which, it seems to me, is the important point to be considered before we vote on this measure.

The Senate will remember that last Monday, when the bill was under consideration, I tried to get a vote upon the litigating proviso which is now embodied in the amendment offered by the Senator from Ohio, but the amendment offered by the Senator from Alabama [Mr. BANKHEAD] prevented that.

I said then that I thought it would be impossible for Congress to adopt a general policy controlling the water powers of this country until the vital question raised in the first section of the bill as reported from the committee had been answered by the Supreme Court of the United States.

It seems to me that my position has been greatly fortified and strengthened by subsequent events, for since that time it has developed that an amendment to the river and harbor bill involves precisely the same principle, and instead of having two schools of hydrological philosophy upon this subject we have now three or four or five.

It is not necessary for me to disagree with the Senator from Minnesota or the Senator from New York or the Senator from Idaho upon this question. It does seem to me that I can ask them to agree with me that it will be important before we decide this question ultimately to know which one of the three is right.

The proviso which the Senator from Ohio has in the amendment which he offers to-day provides the way, and the only way, and the only precedent that will be established by the amendment offered by the Senator from Ohio is that the Supreme Court of the United States will take this question in hand and not only say to Congress, but to the Executive Department of this country, what it can and can not do upon this all-important question.

I should like to ask the Senator from Virginia [Mr. SWANSON], who has had much to say about the position of the present Executive on this subject, if he can promise himself that the incoming administration will be any less likely to consider the rights of the people upon this important question than the outgoing administration. If that be the case, it means that you have prevented and stopped the development of water powers in this country for an indefinite period of time, unless the pending amendment is adopted. That is the important question which we must consider. If we want to take the position that will prevent altogether the creation of wealth in this country, because when it is created we think we shall be unable to control it, let us say so.

In view of the fact that we have one school representing one line of thought and purpose and another school representing another line of thought and purpose and still another representing another line of thought and purpose upon this question, we will realize before we are through with it that this is a navigation question from more than one point of view. If we keep the course we are now on the only possible result will be that we will sail in a circle until we strike a rock, and that rock will be the Constitution of the United States. If we adopt the amendment offered by the Senator from Ohio, we will go to the only place where we can get a pilot who can bring us into port.

Mr. PITTMAN. Mr. President, I wish to explain my position on this question, so as not to appear inconsistent.

I voted in the affirmative on the question as to whether or not the amendment was germane, because I believe that the power to create water power and dispose of it is germane to the control of navigation. I intend to vote against this amendment, because I think it is a dangerous policy to turn over to individual enterprise the improvement of navigation.

I think the senior Senator from Minnesota [Mr. NELSON] has correctly stated the distinction between the two propositions that have been discussed. I want my stand to be clear on this point, so that there may be no misunderstanding. I intend to vote against the pending amendment.

Mr. THOMAS. Mr. President, I have been so much impressed by the remarks of the Senator from Wisconsin [Mr. LA FOLLETTE] within the last few moments that I do not propose to take the time in a discussion of this amendment that I originally intended to occupy. I believe thoroughly that his statement of the importance of the bill providing for the ascertainment of the valuation of our great transportation companies is of more importance, as he has said, in its general effect upon the business and the welfare of the country than all the appropriation bills now pending for determination before this body. Hence, I want to see that bill crystallized into legislation before we adjourn, and I shall regret very much that any time which I may occupy would even indirectly contribute to its defeat.

Mr. President, I have no wish to block the financial legislation of this country. I realize the necessity of its enactment, to the end that the affairs of the Government may go on in their regular way, quite as deeply and profoundly as any other Member of this Chamber, but I do not think that because the present session has but a few remaining days to do business in we should for that reason hastily enact important legislation concerning the vast appropriation bills.

I want to impress, by way of preliminary, upon the attention of the Chamber the fact that this debate occurring at this time is largely, if not almost entirely, due to the fact that the appropriation bills are loaded down with amendments that are directed by and intended to subserve private interests instead of confining the appropriation bills to their legitimate purposes and objects.

The Connecticut River bill came up the other day for discussion. A good deal of time was devoted to it, perhaps more time than the importance of the subject in the opinion of some at least demanded. When the deliberate judgment of this body was taken it was against some of the principal features of that measure. It now appears practically in the same phraseology as an amendment to this appropriation bill, because of the fact, I presume, that this body did approve the amendment offered by the Senator from Minnesota with reference to water power in the Mississippi River and in which the cities of Minneapolis and St. Paul and the State University were interested.

I opposed that amendment upon the fundamental proposition that this Government has no power under the guise of improving navigation to spend money for private purposes, which was admittedly the amendment of the Senator from Missouri. I want to say in perfect candor that if that amendment is to stand I know of no reason why this one ought not also to stand, because, bad as it is, in my judgment it is not so bad as the one which is now a part of the bill up to this time in our deliberations concerning it. I shall vote against it, there-

fore, because of the principal objections urged against it the other day and also because it has no place or part in this appropriation bill.

It was stated by the Senator from Ohio last week that a great many of the items in this bill, under the guise of improving navigation were designed to create water power in the interest of corporations and individuals. I do not, of course, know what specific items the Senator referred to, but if it be a fact that the river and harbor bill is a bill that is designed to improve the navigation of the rivers and to protect the property of the country from our annually recurring floods and inundations, then it ought not to be loaded down with appropriations that are designed, under the guise of serving the public, to create property or promote the interests of large electric-power concerns throughout the country. I think it is better that we should ascertain and determine once for all whether appropriation bills are going to be what the name implies or whether they are going to be vehicles through the medium and agency of which large private interests can carry out their purposes and objects under the guise of improving the navigation of the rivers of this country.

I can not, therefore, Mr. President, subscribe to the proposition that the passage of appropriation bills is so essential and important, in view of the fact that these things occur in such bills. I am absolutely satisfied, as was stated by the Senator from Idaho [Mr. BORAH] a few moments ago, that the Minneapolis enterprise or scheme—and I use the term in no disrespectful manner—never could have been passed through this body, basing my opinion on the vote on the Connecticut River bill, unless it had been made a part and parcel of a great appropriation bill in which Members are interested, and very properly so, because of the advantages to be derived from its enactment, and also because of the demand, principally from the Mississippi River Valley, for appropriations for the protection of property and the improvement of the navigability of the river, it being at present, in view of the recent enormous floods, in a most unsatisfactory condition.

I was told the other day by a Member of this body that the total appropriations for this year in all of our several bills will be in excess of \$1,150,000,000, an amount so great that the imagination is staggered when we attempt to conceive of it. It is, if the statement be true—and I have no doubt that it is—the most enormous aggregate appropriation ever made by any Congress of the United States. The bills which contain in the aggregate this enormous sum come before this body within 10 days of its adjournment, and we are supposed to be able and to be capable of taking up the various items, criticizing them, and determining which of them are proper and which of them are not.

I have heard a great deal about conservation since I became a Member of this body. It seems to me that conservation of our revenues—the money of the people—and its appropriation along proper channels for public purposes, wisely provided for and wisely administered, is an element of conservation that appeals very strongly to the hearts, the consciences, and the judgment of all men. We may save at the spigot here by our general system of preserving the resources of the country and then waste at the bung-hole through these extravagant expenditures of the public money, and our efforts of conservation will be defeated by ourselves.

This stupendous sum of money, \$1,150,000,000, is the equivalent of \$11.50 per head for every man, woman, and child in these United States, calculating the population upon a basis of 100,000,000 souls. This is taxation which perhaps the people do not feel directly because of the manner in which the revenues are imposed and collected. The Democratic Party has recently, at the last election, accomplished a tremendous triumph, and has swept its national ticket into power by one of the largest majorities ever given to a candidate in the electoral college. That triumph was based, among other things, upon the assurance to the people, which it must keep, that taxation shall be reduced, particularly by a revision of the tariff. How is it possible for us to thus legislate, while, at the same time, we are making these enormous expenditures of public money? They may be necessary; I have not been long enough in this Chamber, Mr. President, to act as a censor of appropriation bills, and, certainly, I do not propose at any time to arrogate to myself any superior or abundant wisdom not possessed by my colleagues in this body; but we all know, as citizens cognizant of public opinion, that there are some measures of appropriation which have become so flagrant in their disposal of public moneys as to be termed "pork-barrel bills," a name, the significance of which is, of course, obvious to all, and which has been the outgrowth of the use of our powers of legislation to so dispose of public moneys as at least to create the suspicion that they were not at all times intended so much for the

public use as for private purposes; and among them is the river and harbor bill, swelled this year to more than \$8,000,000 in excess of the amount of the last appropriation.

The Senator from Ohio has called specific attention to certain items of appropriation referring to so-called improvements of so-called rivers which are not navigable, which never were navigable, and which can never be made navigable; and yet one of them, in the particular to which he referred, has in this bill an appropriation of \$270,000. I do not suppose that that is by any means a solitary instance of the method in which this bill has been constructed. I do not believe that I am extravagant when I say that perhaps one-third of the amount of the appropriations carried in this measure are appropriations either for the purpose of creating water power under the guise of improving rivers and harbors, or for the purpose of carrying on other enterprises in which individuals or corporations are largely interested, and which, therefore, justify the popular verdict as to the character and nature of such measures.

If it were not for the fact that the great Mississippi Valley needs the appropriations which this bill carries; if it were not for the fact that that mighty stream has recently overflowed its boundaries, swept levees away, and visited death and destruction on its course to the Gulf, I, personally, would rather see this bill fail than to see it become a law, carrying, as it does, the provisions to which I have called attention.

Now, Mr. President, addressing myself directly to this amendment for a moment—and I shall not detain the Senate longer—we are making precedents for the future. The Senator from Ohio has referred to certain amendments or certain changes which have been introduced into the body of this measure, by means of which it has been differentiated from the measure upon which we voted the other day. I do not question the purpose for which these amendments were designed; but we are now at the eleventh hour, so to speak, in the consideration of the bill proposing to attach to it an amendment that is designed to give a private corporation in the State of Connecticut the right to make certain improvements, in consideration of which it will obtain a water power, which it otherwise would not possess. It will get that water power by a contract from the Government, which does not own it, and we are going to put the measure through, not because of its merits, but because, being a part of a bill in which so many Senators are interested, they will vote for it lest the bill itself be defeated.

The Senator from Virginia [Mr. SWANSON] made the statement that if one of the amendments were incorporated in the bill, that being the Connecticut River bill as it passed the Senate the other day, the President of the United States might veto it. Mr. President, are we to be deterred from the consideration of the merits of a measure simply because the Executive of the United States may use his veto power and thus bring the legislation itself to nothing? There are many features of the bill which, in my judgment, would make it a God-send if the President did disapprove it. We are legislating in these bills for the next fiscal year, beginning in July. There have been sessions of Congress in the past that have adjourned without the enactment of measures like this; and yet the Government still survives. There have been sessions of Congresses which have adjourned which passed no river and harbor bill.

I recall particularly one a few years ago that was defeated by constant discussion upon the floor of this body by the late Senator from Montana, Mr. Carter. It did not seem to me—and my recollection is pretty good of the condition of affairs immediately following that time and since—that the failure of that bill stopped the wheels of Government or interfered with the general course of public affairs in the slightest degree.

We ought to take up these bills at an earlier period in the session. They should not come over at so late an hour; we ought to consider them item by item and then determine that which is designed for the public good and that which should have no place in legislation of this kind.

Before I take my seat, Mr. President, I want to say one further word upon a subject somewhat akin to and, perhaps, directly involved in this matter. It is the necessity, in my opinion, of legislation here which will enable the President of the United States to veto specific items in appropriation bills. We should give him the power to scan these enormous appropriations of money and to draw his pen through those items which, in his judgment, are not warranted either by the state of the public revenues or by the object which it is designed to subserve. By conferring upon him such authority we could save the Treasury of the United States millions of dollars every year and at the same time devote ample funds to the several departments for their support and maintenance during our successive fiscal periods.

The PRESIDENT pro tempore. The question is on the amendment submitted by the Senator from Ohio [Mr. BURTON].

Mr. THOMAS. I suggest the absence of a quorum, Mr. President.

The PRESIDENT pro tempore. The absence of a quorum being suggested, the roll will be called.

The Secretary called the roll, and the following Senators answered to their names:

|              |                |                |              |
|--------------|----------------|----------------|--------------|
| Ashurst      | Curtis         | Lippitt        | Root         |
| Bankhead     | Dillingham     | Lodge          | Sheppard     |
| Borah        | du Pont        | McCumber       | Simmons      |
| Bourne       | Fletcher       | McLean         | Smith, Ariz. |
| Bradley      | Foster         | Martin, Va.    | Smith, S. C. |
| Brady        | Gallinger      | Martine, N. J. | Smoot        |
| Brandegee    | Gamble         | Myers          | Stone        |
| Briggs       | Gardner        | Nelson         | Sutherland   |
| Bristow      | Gore           | Newlands       | Swanson      |
| Burnham      | Gronna         | O'Gorman       | Thomas       |
| Burton       | Guggenheim     | Oliver         | Thornton     |
| Chamberlain  | Hitchcock      | Owen           | Townsend     |
| Clapp        | Johnson, Me.   | Page           | Watson       |
| Clark, Wyo.  | Johnston, Ala. | Paynter        | Webb         |
| Clarke, Ark. | Jones          | Percy          | Wetmore      |
| Crawford     | Kavanaugh      | Perkins        | Williams     |
| Culberson    | Kenyon         | Polindexter    | Works        |
| Cullom       | La Follette    | Pomerene       |              |
|              | Lea            | Richardson     |              |

The PRESIDENT pro tempore. On the roll call 74 Senators have answered to their names. A quorum of the Senate is present. The question is on the amendment submitted by the Senator from Ohio [Mr. BURTON]. [Putting the question.] By the sound the "noes" appear to have it.

Mr. McLEAN. I ask for the yeas and nays.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. CULLOM (when his name was called). I have a general pair with the junior Senator from West Virginia [Mr. CHILTON]. I transfer that pair to the junior Senator from Massachusetts [Mr. CRANE] and will vote. I vote "nay."

Mr. NELSON (when his name was called). I have a pair with the senior Senator from Georgia [Mr. BACON] and therefore withhold my vote.

Mr. CURTIS (when the name of Mr. SMITH of Michigan was called). I am requested to announce that the senior Senator from Michigan [Mr. SMITH] is paired with the junior Senator from Missouri [Mr. REED]. I will let this announcement stand for the day.

Mr. WILLIAMS (when his name was called). I wish to transfer my pair with the Senator from Pennsylvania [Mr. PENROSE] to the Senator from Indiana [Mr. SHIVELY] and will record my vote. I vote "nay."

The roll call was concluded.

Mr. STONE. I inquire if the Senator from Wyoming [Mr. CLARK] has voted?

The PRESIDENT pro tempore. The Chair is informed that that Senator has not voted.

Mr. STONE. I have a general pair with that Senator and therefore will not vote. If at liberty to vote, I should vote "nay."

Mr. BRADLEY (after having voted in the negative). I understand the Senator from Indiana [Mr. KERN], with whom I am paired, has not voted, and I therefore withdraw my vote.

Mr. SIMMONS (after having voted in the negative). I should like to inquire if the Senator from Minnesota [Mr. CLAPP] has voted?

The PRESIDENT pro tempore. The Chair is informed that that Senator has not voted.

Mr. SIMMONS. I withdraw my vote, as I have a general pair with that Senator.

The result was announced—yeas 27, nays 49, as follows:

|                |                |              |              |
|----------------|----------------|--------------|--------------|
| YEAS—27.       |                |              |              |
| Brandegee      | Dillingham     | Lippitt      | Page         |
| Briggs         | du Pont        | Lodge        | Perkins      |
| Bristow        | Gallinger      | McCumber     | Polindexter  |
| Brown          | Gore           | McLean       | Richardson   |
| Burnham        | Hitchcock      | Newlands     | Root         |
| Burton         | La Follette    | Oliver       | Townsend     |
| Crawford       | Lea            | Owen         |              |
| NAYS—49.       |                |              |              |
| Bankhead       | Foster         | O'Gorman     | Swanson      |
| Borah          | Gamble         | Overman      | Thomas       |
| Bourne         | Gardner        | Paynter      | Thornton     |
| Brady          | Gronna         | Percy        | Tillman      |
| Bryan          | Guggenheim     | Pittman      | Warren       |
| Catron         | Johnson, Me.   | Pomerene     | Watson       |
| Chamberlain    | Johnston, Ala. | Sheppard     | Webb         |
| Clarke, Ark.   | Jones          | Smith, Ariz. | Wetmore      |
| Culberson      | Kavanaugh      | Smith, Ga.   | Williams     |
| Cullom         | Kenyon         | Smith, Md.   | Works        |
| Cummins        | Martin, Va.    | Smith, S. C. |              |
| Fall           | Martine, N. J. | Smoot        |              |
| Fletcher       | Myers          | Sutherland   |              |
| NOT VOTING—19. |                |              |              |
| Ashurst        | Clark, Wyo.    | Kern         | Simmons      |
| Bacon          | Crane          | Nelson       | Smith, Mich. |
| Bradley        | Curtis         | Penrose      | Stephenson   |
| Chilton        | Dixon          | Reed         | Stone        |
| Clapp          | Jackson        | Shively      |              |

So Mr. BURTON's amendment was rejected.

Mr. McLEAN. Mr. President, I offer the amendment which I send to the desk.

The PRESIDENT pro tempore. The Senator from Connecticut offers an amendment, which will be stated.

Mr. McLEAN. I will say that the amendment is the same as the amendment offered by the Senator from Alabama [Mr. BANKHEAD] and the Senator from Washington [Mr. JONES].

Mr. BANKHEAD. I did not offer the amendment. I suggested that I would do so, but I withdrew it.

Mr. McLEAN. Well, the amendment is the same as the amendment suggested by the Senator from Alabama. All I care to say with regard to this amendment is that it seems to me this measure, having been relieved of all its objectionable features, certainly ought to receive at the hands of the Senate a support equal to that given to the Minnesota proposition, which contains all of the objectionable features.

Mr. BORAH. May I ask if this amendment is the same as the bill which has passed the Senate?

Mr. McLEAN. It is the same as the bill which has passed the Senate.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. On page 5, after line 18, it is proposed to insert—

Mr. McLEAN. I think, Mr. President, we might avoid the reading of the amendment. It is in precisely the same language as the bill which passed the Senate, and I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Is there objection to dispensing with the reading of the amendment?

Mr. BANKHEAD. Mr. President, I think the amendment had better be read.

The PRESIDENT pro tempore. The amendment will be read.

The Secretary proceeded to read the amendment, which is as follows:

That the assent of Congress is hereby given to the Connecticut River Co., a corporation organized and doing business under the laws of the State of Connecticut, to relocate its "Enfield Dam," so called, and to construct, maintain, and operate such relocated dam (which if located opposite Kings Island, in said river, shall extend across both branches of the river), together with works appurtenant and necessary thereto, across the Connecticut River at any point below a line crossing both branches of the river and Kings Island midway between the northerly and southerly ends of said island: *Provided*, That, except as may be otherwise specified in this act, the location, construction, maintenance, and operation of the structures herein authorized, and the exercise of the privileges hereby granted, shall be in accordance with the provisions of the act approved June 23, 1910, entitled "An act to amend an act entitled 'An act to regulate the construction of dams across navigable waters,' approved June 23, 1906": *And provided further*, That the time for completing said dam and appurtenances may be extended by the Secretary of War, in his discretion, two years beyond the time prescribed in the aforesaid act: *And provided further*, That the rights and privileges hereby granted may be assigned with the written authorization of the Secretary of War, or in pursuance of the decree of a court of competent jurisdiction, but not otherwise: *Provided further*, That if at any time said Connecticut River Co., or its assigns, or its property, shall be owned or controlled by any device, permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that it shall form a part of, or in any way effect any combination, or be in anywise controlled by any combination in the form of an unlawful trust, or enter into any contract or conspiracy in restraint of trade in the production, development, generation, transmission, or sale of any power or electrical energy, then the permit herein granted shall be forfeited and canceled by the Secretary of War through appropriate proceedings instituted for that purpose in the courts of the United States.

SEC. 2. That the height to which said dam may be raised and maintained shall not be less than 39 feet above zero on the Hartford gauge: *Provided*, That said corporation shall permit the continuous discharge past said dam of all water flowing in the Connecticut River whenever the discharge into the pool created by the dam hereby authorized is 1,000 cubic feet per second or less, and at all greater discharges into said pool shall provide a minimum discharge past said dam of not less than 1,000 cubic feet per second: *And provided further*, That said corporation may, for not to exceed five hours between sunset and sunrise, limit the discharge past said dam to 500 cubic feet per second whenever such limitation will not, in the opinion of the Secretary of War, interfere with navigation. The measure of water thus to be discharged shall include all the water discharged through the lock herein provided for and the present locks and canal of said corporation: *And provided further*, That nothing in this act shall in any way authorize said corporation at any time or by any means to raise the surface of the river at the location just above the present Enfield Dam to any height which shall raise the surface of the river at the lower tailrace of the Chemical Paper Co. in Holyoke, Mass., higher than can result from the erection or maintenance of any dam or dams which said corporation is authorized to erect or maintain in accordance with the order and decree of the Circuit Court of the United States for the District of Connecticut, passed June 16, 1884, in the case of the Holyoke Water Co. v. the Connecticut River Co.

SEC. 3. That the said Connecticut River Co. shall build coincidentally with the construction of the said dam and appurtenances, at a location to be provided by said corporation and approved by the Secretary of War, and in accordance with plans approved by the Secretary of War and the Chief of Engineers, a lock of such kind and size, and with such equipment and appurtenances as shall conveniently and safely accommodate the present and prospective commerce of the river, and when the said lock and appurtenances shall have been completed the said corporation shall convey the same to the United States, free of cost, together with title to such lands as may be required for approaches to said lock and such land as may be necessary to the United States for the maintenance and operation thereof, and the United

States shall maintain and operate the said lock and appurtenances for the benefit of navigation, and the said corporation shall furnish to the United States, free of charge, water power, or power generated from water power, for operating and lighting the said constructions; and no tolls or charges of any kind shall be imposed or collected for the passage of any boat through the said lock or through any of the locks or canal of said corporation.

SEC. 4. That compensation shall be made by the said Connecticut River Co. to all persons or corporations whose lands or other property may be taken, overflowed, or otherwise damaged by the construction, maintenance, and operation of the said dam, lock, and appurtenant and accessory works, in accordance with the laws of the State where such lands or other property may be situated; but the United States shall not be held to have incurred any liability for such damages by the passage of this act.

SEC. 5. That the provisions of the act entitled "An act to regulate commerce," passed and approved on the 4th day of February, 1887, together with the amendments thereto, shall apply to any corporation or any person or persons engaged in transmitting hydroelectric power or electricity from one State, Territory, or District of the United States to any State, Territory, or District of the United States, or from one place in a Territory to another place in the same Territory or to any foreign country, and that the term "common carrier" as used in said act and the amendments thereto shall include companies engaged in transmitting hydroelectric power or electricity as aforesaid: *Provided*, That said act shall not apply to the transmission of hydroelectric power or electricity wholly within one State and not transmitted to or from a foreign country, from or to any State or Territory as aforesaid; that the rules prescribed in said act as to just and reasonable charges or rates and the procedure relative to other common carriers, in so far as applicable, shall apply to such company, person, or persons transmitting hydroelectric power or electricity as aforesaid, and to the fixing and establishing of just and reasonable charges or rates fully and completely.

Mr. BANKHEAD. Mr. President, as I understand the amendment is in the exact form of the bill which has passed the Senate, I will withdraw my demand for the reading of the amendment.

The PRESIDENT pro tempore. Without objection, the reading of the amendment will be dispensed with.

The question is on agreeing to the amendment submitted by the Senator from Connecticut [Mr. McLEAN].

Mr. POINDEXTER. On that I ask for the yeas and nays. The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. CULLOM (when his name was called). I again announce my general pair with the junior Senator from West Virginia [Mr. CHILTON]. I transfer that pair to the junior Senator from Massachusetts [Mr. CRANE] and vote. I vote "yea."

Mr. PAYNTER (when his name was called). I observe that the senior Senator from Colorado [Mr. GUGGENHEIM] is absent. As I have a general pair with him, I will withhold my vote.

Mr. STONE (when his name was called). I have a pair with the senior Senator from Wyoming [Mr. CLARK]. As he does not seem to be present, I withhold my vote.

Mr. WILLIAMS (when his name was called). I desire to transfer my general pair with the senior Senator from Pennsylvania [Mr. PENROSE] to the Senator from Indiana [Mr. SHIVELY] and will vote. I vote "nay."

The roll call was concluded.

Mr. NELSON. I desire to state that I have a general pair with the senior Senator from Georgia [Mr. BACON], and I therefore withhold my vote.

Mr. BRADLEY (after having voted in the affirmative). I desire to announce that I have transferred my pair with the Senator from Indiana [Mr. KERN] to the Senator from Maryland [Mr. JACKSON].

The result was announced—yeas 37, nays 35, as follows:

| YEAS—37.       |                |              |              |
|----------------|----------------|--------------|--------------|
| Borah          | Cullom         | Kenyon       | Page         |
| Bourne         | Cummins        | La Follette  | Perkins      |
| Bradley        | Curtis         | Lippitt      | Richardson   |
| Brady          | Dillingham     | Lodge        | Root         |
| Brandegee      | du Pont        | McCumber     | Sutherland   |
| Briggs         | Gallinger      | McLean       | Townsend     |
| Brown          | Gamble         | Myers        | Wetmore      |
| Burnham        | Gore           | Newlands     |              |
| Barton         | Hitchcock      | Oliver       |              |
| Catron         | Jones          | Owen         |              |
| NAYS—35.       |                |              |              |
| Bankhead       | Foster         | Overman      | Smith, Md.   |
| Bristow        | Gronna         | Percy        | Smith, S. C. |
| Bryan          | Johnson, Me.   | Pittman      | Swanson      |
| Chamberlain    | Johnson, Ala.  | Poinexter    | Thomas       |
| Clarke, Ark.   | Kavanaugh      | Pomerene     | Thornton     |
| Crawford       | Lea            | Sheppard     | Tillman      |
| Culberson      | Martin, Va.    | Simmons      | Webb         |
| Fall           | Martine, N. J. | Smith, Ariz. | Williams     |
| Fletcher       | O'Gorman       | Smith, Ga.   |              |
| NOT VOTING—23. |                |              |              |
| Ashurst        | Dixon          | Paynter      | Stephenson   |
| Bacon          | Gardner        | Penrose      | Stone        |
| Chilton        | Guggenheim     | Reed         | Warren       |
| Clapp          | Jackson        | Shively      | Watson       |
| Clark, Wyo.    | Kern           | Smith, Mich. | Works        |
| Crane          | Nelson         | Smoot        |              |

So Mr. McLEAN's amendment was agreed to.

Mr. NELSON. I offer the amendment which I send to the desk. It provides for a survey, and should be inserted on page 68, after line 4.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. On page 68, after line 4, it is proposed to insert:

Westchester Creek, N. Y., with a view to providing a channel width of 150 feet up to the point where it is crossed by the Fort Schuyler road.

The amendment was agreed to.

Mr. LEA. Mr. President, I rise to a question of privilege. On the previous roll call, on the amendment offered by the Senator from Ohio [Mr. BURTON], I voted "yea." If I had understood the question, I should have voted "nay." I ask unanimous consent that that change may be made.

The PRESIDENT pro tempore. The vote can not be changed. The Senator's statement will appear in the RECORD.

The PRESIDENT pro tempore subsequently said: A moment ago the Senator from Tennessee stated that he had voted under a misapprehension on a certain roll call, and desired to change his vote. The Chair suggested that that could not be done, but that the Senator's statement would appear in the RECORD. An examination of the rules reveals the fact that by unanimous consent the Senator can change his vote. Is there objection?

Mr. ROOT. I object.

The PRESIDENT pro tempore. The Senator from New York objects.

Mr. SMITH of Arizona. I offer the amendment which I send to the desk.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. On page 83, after line 7, it is proposed to insert:

That all sums of money heretofore expended on the east side of the Colorado River in revetment and levee-construction work under the Yuma irrigation project in Arizona, and now carried as a charge against a lien on the farms of the settlers under said project, be, and the same are hereby, declared a charge against the Treasury of the United States, and that the said charge shall not diminish the irrigation fund in the Treasury.

Mr. SMITH of Arizona. Mr. President, when the Colorado River, just south of Yuma, broke into the desert of California and created the Salton Sea and threatened the destruction of the Imperial Valley, a great amount of money was expended by the Government and by the Southern Pacific Railroad Co. in filling that break in the river. I understand that through the work necessary to accomplish this the waters were deflected from that bank over onto the lands on the Arizona side, covering a large body of the farming lands there held by settlers under the irrigation project. They immediately demanded protection, and it was furnished from the irrigation fund, and a large amount was spent and charged as a lien on the lands of these farmers under the project. The farmers were thus made to pay for keeping the Colorado within its channel.

I do not wish to detain the Senate at this late and important hour; but it is obviously just that these men's farms should not be covered with a lien for money expended by the Government in keeping that unruly river within its banks. It was not done on the California side, and it ought not to be done on the Arizona side.

Mr. BURTON. Mr. President, may I ask the Senator from Arizona a question?

The PRESIDENT pro tempore. Does the Senator from Arizona yield to the Senator from Ohio?

Mr. SMITH of Arizona. Certainly.

Mr. BURTON. Has any estimate been made of these amounts?

Mr. SMITH of Arizona. Yes; I had an estimate made. It has run up now to six hundred and some odd-thousand dollars, as claimed by the Reclamation Service, and over a million as claimed by the water users.

Mr. BURTON. Was that estimate made in a river and harbor bill, or by the War Department, with a view to navigation, or in any connection with navigation?

Mr. SMITH of Arizona. No. I would not say that it is a question of navigation for which an estimate has been made, but that river is navigable, and known as a navigable river, and for many years has been navigated from the Gulf of California far north of Yuma, and in fact to where the Grand Canyon of the Colorado disembogues.

Mr. BURTON. Then there is no question of any expenditure or work for the promotion of navigation involved here, is there?

Mr. SMITH of Arizona. The navigation of the river is utterly lost forever without this. The river, in my judgment, will ultimately become navigable as soon as the Panama Canal is finished.

Mr. BURTON. Is the Government now engaged in any work to secure the navigability of that river?

Mr. SMITH of Arizona. It is engaged in the work of keeping up the banks on the California side.

Mr. BURTON. That, however, has nothing to do with any project of navigation, has it?

Mr. SMITH of Arizona. It is engaged in keeping those banks up for navigation, or whatever purpose it may have. I do not know what its purpose is. I am not here to commit myself to the statement that this is for the navigation of the Colorado River. I am here, though, to show that it is a navigable stream; we can not control it; we have no power over it, and in the organic act under which our State was admitted, the Government took possession not only of the Colorado River but of every other river in the States of both New Mexico and Arizona, and claimed jurisdiction to control and own them. It would be obviously unjust that the farmers to whom I have referred should have a lien placed on their lands for necessary improvements of the Colorado, a navigable river. Yet that is what has been done; and I am simply asking that they may be relieved from this awful burden.

I ask for a vote on my amendment, Mr. President.

Mr. ROOT. Mr. President, may the amendment be again stated?

The PRESIDENT pro tempore. The Secretary will again state the amendment.

The SECRETARY. On page 83, after line 7, it is proposed to insert:

That all sums of money heretofore expended on the east side of the Colorado River in revetment and levee-construction work under the Yuma irrigation project in Arizona, and now carried as a charge against a lien on the farms of the settlers under said project, be, and the same are hereby, declared a charge against the Treasury of the United States, and that the said charge shall not diminish the irrigation fund in the Treasury.

The PRESIDENT pro tempore. The question is upon the amendment offered by the Senator from Arizona. [Putting the question.] The noes appear to have it. The noes have it, and the amendment is not agreed to.

Mr. SMITH of Arizona. Mr. President, I should like to have a vote on that with a show of hands. Before the matter goes further, if I am in order—

The PRESIDENT pro tempore. The Senator is in order.

Mr. SMITH of Arizona. It has been suggested to me by a Senator apparently in sympathy with the amendment that it in no way differs from the appropriations made in this bill for leveeing the Mississippi River to prevent overflow on adjacent lands. You pay to keep that river in its banks and make overburdened farmers in Arizona pay to keep the Colorado within its proper limits. Of course, you pretend to levee the Mississippi to protect navigation, and it does protect it. Levee the Colorado and you can make it navigable and save the lands from overflow. The difference is too thin to fool anybody.

Mr. BURTON. Mr. President, I do not seek at all to contradict what the Senator from Arizona says, but no such item has ever been allowed in a river and harbor bill as that which he is trying to pass for a specific purpose.

Mr. SMITH of Arizona. Where did they get the money and how did they get it to levee other rivers?

Mr. BURTON. Under such a plan as this, wherever there is damage to adjacent lands by flood, an amendment might be introduced to make the cost of reparation or improvement a charge upon the Treasury.

Mr. SMITH of Arizona. How is it in the Mississippi River, as was suggested to me?

Mr. BURTON. That is in pursuance of specific reports. The policy of the Government for many years was based upon the idea that it aided navigation, and for years a clause was carried in the bill that it should not be expended, that no levees should be built, except in aid of navigation.

Mr. SMITH of Arizona. Then the Senator confesses that that is only a theory?

Mr. BURTON. Oh, no; I do not, Mr. President; but it is not worth while to go into that now.

Mr. SMITH of Arizona. I do not want to go into it.

Mr. BURTON. I do not care to go into the effect of levees upon navigation. They do have a certain effect upon navigation, however.

Mr. SMITH of Arizona. Yes; and they would have in this particular instance; and the Government some day must necessarily levee this river. The Government will do it for navigation purposes, and do it shortly, in my judgment, within the next four or five years. It will have to do it. It is a navigable river now. The Irrigation Service has simply taken from the irrigation fund this amount of money, and has done the work mentioned in this amendment. We say that they have no au-

thority to make that expenditure a lien on the lands of the poor farmers on the Arizona side of the river.

In other words, as matters stand, you have a lien on the lands of the farmers of this Yuma project who are struggling against awful conditions for a living; and yet you put this sum of six hundred and some odd thousand dollars as an actual lien on their farms in addition to the overlarge expenditure contemplated in the scheme.

Mr. ROOT. Are their farms irrigated?

Mr. SMITH of Arizona. They can not irrigate them with the river all over them. They are overirrigated. The river was drowning them out, but by no fault of theirs, but according to my information the damage or overflow was largely caused by impediments placed in the river by the Government or by others acting under its direct consent, but be that as it may, no duty devolved on the farmers of Yuma County to keep the Government's river within its banks.

Mr. SMOOT. I should like to ask the Senator if the revetment was made for the purpose of protecting any reclamation project?

Mr. SMITH of Arizona. I imagine the irrigation authorities would not have taken the irrigation money out of their own treasury and put it into this work unless their purpose in doing it was to protect those lands from absolute destruction. But inasmuch as the Government caused the destruction, it is certainly not right to make this a charge against the farmers, and it seems almost brutal to raise the technical question as to whether or not their relief is put on an appropriation bill or on a river and harbor bill when we have seen a dozen items in this very bill just as obnoxious, under the rules, as my amendment can possibly be.

Mr. SMOOT. Does the Senator contend that the improvements upon the Colorado River made to prevent the waters from overflowing the Imperial Valley in California were the cause of the water overflowing on the opposite side of the river?

Mr. SMITH of Arizona. I have had, and I wish I had before me now, statements by the dozen that in that effort they have thrown this water over on the Arizona side. That applies to the work of the Government, at least—whether at this particular time I will not say.

Mr. SMOOT. It is just opposite the works of the Government on the California side, is it?

Mr. SMITH of Arizona. That river drains a watershed almost as large or larger than that drained by the Ohio, and it comes down there in enormous torrents, fretting against the least restraint on it anywhere. There is no telling where it will burst through these alluvial banks, which are composed, as you know, of sand, which gives way instantly as soon as you put a hundred pounds of extra weight of running water against them.

Mr. SMOOT. How close is the overflow on the Arizona side to the works that were put in by the railroad company to protect the Imperial Valley? Is it one mile, or more?

Mr. SMITH of Arizona. As to the particular obstruction that I have heard was placed in the river, it is almost opposite, in my understanding of it; but of this I am not sure, nor does it matter where the obstruction was if it caused the damage.

Mr. SMOOT. It must be very near the Mexico line, then, because the point where the work was done by the railroad company was just before the Colorado River turns into Mexico.

Mr. SMITH of Arizona. Oh, I know where that is. I am as familiar with that as I am with the interior of this Chamber.

Mr. SMOOT. I thought I would ask the question for the information of the Senate.

Mr. ROOT. Has there been any report of a committee on this matter, or any report of engineers?

Mr. SMITH of Arizona. There has been no report on it, except a report of this expenditure by the department. Ever since I have been in the Senate I have been trying to get something done with it. As long as I stay here, I will still be trying to have justice done these farmers. How can they afford to clear more lands, when any flood might add another million to the lien on their farms? If Senators only knew the burdens the home makers of our country bear, they would not seek means to avoid just demands on the National Treasury, but rather would they hunt means to help them in the struggle.

Mr. BRANDEGEE obtained the floor.

Mr. POINDEXTER. I will ask unanimous consent to have the amendment reported.

Mr. BRANDEGEE. I have the floor, Mr. President.

The PRESIDENT pro tempore. The Senator from Connecticut is entitled to the floor.

Mr. BRANDEGEE. I simply wanted to express my surprise that Senators upon the other side of the center aisle, who have been beseeching the Senate for an hour or so not to load this bill down with extraneous amendments which would be apt to

impede its progress through various places where it must go before it becomes a law, should offer an amendment which is clearly out of order, but against which I will refrain from making the point of order. I simply make this remark to show the consistency that pervades the Chamber on all these matters.

Mr. SMITH of Arizona. If the Senator himself had been as consistent when he offered the Connecticut-dam bill as an amendment, we would have saved a couple of hours of debate.

Mr. BRANDEGEE. I notice, however, that the Senate voted that my amendment was germane.

Mr. SMITH of Arizona. It might do likewise in the case of my amendment, but I thank the Senator for not raising the point of order.

Mr. NEWLANDS. Mr. President—  
The PRESIDENT pro tempore. Does the Senator from Arizona yield to the Senator from Nevada?

Mr. SMITH of Arizona. Certainly.

Mr. NEWLANDS. I wish to ask the Senator from Arizona whether the Colorado River is not capable of being made a navigable river by resorting to the same means that have prevailed upon other rivers, such as the Mississippi, with reference to bank protection and levee building and storage of flood waters?

Mr. SMITH of Arizona. There is no doubt in the world about it. It can be made a navigable river up nearly to the mouth of the Grand Canyon—will some day.

Mr. NEWLANDS. And it can also be made exceedingly useful in the development of water power and the reclamation of arid lands.

Mr. SMITH of Arizona. Yes; and that is what the great Imperial Valley and the Yuma project both rely on to-day. I mean the dam for irrigation. It is not high enough, however, to develop there much power for electrical purposes.

Mr. NEWLANDS. I understand the Senator's complaint to be that a very large sum of money, spent really in the line of making this a navigable river, has been fastened upon the irrigation fund and then fastened by that fund as a lien upon the farms of settlers under the Yuma project.

Mr. SMITH of Arizona. I am thankful to the Senator for making perfectly clear what I have so imperfectly said myself.

Mr. SMOOT. Mr. President, the reason I called the Senator's attention to the conditions, or asked him to explain the conditions, was this: I know that where the course of the waters of the Mississippi River has been changed from one side to the other, and caused overflows, there have been millions and millions of dollars of claims filed against the Government for those overflows; and I wanted the Senator, and also the Senate, to know whether or not this was in the same class as those claims on the Mississippi. I understood the Senator knows that those claims on both sides of the Mississippi have been made by the millions of dollars against the Government.

Mr. SMITH of Arizona. I know they have; but I wanted to avert any question of any such claims, believing as I do that this is a part of an ultimate scheme of making that river navigable so that vessels coming up from the South American countries through the Panama Canal can go by smaller craft directly up the Colorado River to the town of Yuma. It has been a navigable stream for 40 or 50 years; boats ran on it regularly; so it can be made a navigable river again, and this is an essential part of the work.

The real purpose of building these works was to keep the water out of those lands—that is the truth of it—just as they have erected levees on the Mississippi River to keep it off of the lands there. Now, these poor farmers in the State of Arizona have been burdened with that debt. They have to give up their lands if you put this burden on them, and it is just a question of whether the Government will assume it or make these men try to pay it. They can not possibly pay it, as a matter of fact.

Mr. SMOOT. The revetment, then, was not done for the purpose of navigation? It was done for the purpose of protecting the land?

Mr. SMITH of Arizona. I have stated as plainly as I could the immediate purpose, as I said to the Senator before. The reason they appealed to the irrigation fund, if they did so appeal, must have been because they were trying to save the land—their homes—all they had on earth.

Mr. BORAH. As I understand, this expenditure, whatever it is, is being charged up to the land of the settlers in that immediate vicinity?

Mr. SMITH of Arizona. Just to the few settlers there. They are charging it up to their land and making it a lien on their land.

Mr. BORAH. It is simply a question of whether the Government shall pay this sum or whether it will drive those settlers away, is it not?

Mr. SMITH of Arizona. That is the only question in the case.

Mr. BORAH. And the reclamation fund has been impaired to such an extent through these expenditures that a crisis has been reached in the reclamation proposition, and that is whether the Government will take care of that portion of the expense which it ought to take care of or whether it will drive these settlers from the land, because the settlers can not pay this expense.

Mr. SMITH of Arizona. In line with what the Senator has said, I know the condition of the farms there at Yuma very well. I was in consultation with the board of directors and the water users last summer. They claim, and I believe it to be true, that it is impossible for them to bear this burden. This tax is the straw that absolutely breaks the patient camel's back. Those men can not stand this tax and make their homes and live there.

Mr. ROOT. Mr. President, I do not understand on what authority under the law any tax was imposed on this land.

Mr. SMITH of Arizona. Does the Senator understand the reclamation act?

Mr. ROOT. I do understand the reclamation act.

Mr. SMITH of Arizona. Did that make any imposition of a tax on the land?

Mr. ROOT. This does not seem to have been a reclamation work.

Mr. SMITH of Arizona. Then the farmers should not pay it. The reclamation act makes the expense of any of its enterprises a claim on the water users under the project. The users thus finally have to pay the costs, no matter how expensive the engineers may make it. In this, as in most cases, the Government made a contract with these farmers known as the water-users' association—

Mr. ROOT. Yes.

Mr. SMITH of Arizona. In which the Government agreed to perfect this system or this project at a charge of so much an acre on each farm; but, as usual, the expense has run far above the estimate and put an overload on their patient shoulders.

Mr. ROOT. For irrigation.

Mr. SMITH of Arizona. For irrigation; yes, sir; that was the purpose of the contract. They did enter into that contract, and yet it is far above the contract they entered into in actual cost. It has quadrupled, I think, or, certainly, is twice or more times as great as the original contract. That lien rests on the farms; and, in addition to that, you are making this revetment work and levee building to keep the Colorado River from washing away everything left—the Government irrigation works and all—an additional charge on the water user.

Mr. ROOT. I understand that, undoubtedly, abuses have been committed in that way in getting settlers on lands upon the representation that there would be a small charge for irrigation, and then carrying on the work in such a way that there is a very heavy charge for irrigation.

I wish this matter could have been before the committee and we could have had the facts ascertained and heard what the Reclamation Service people had to say about it before the Senate acts upon it. I dislike very much to act upon a matter of so great an amount without more complete information and without hearing both sides of the question.

Mr. SMITH of Arizona. If there was not a house there, if there was not a farm there, it would be an absolute necessity to the Government that it should hold that river where it is. It is not only a navigable river, but it is an interstate and international stream. It goes into Mexico. It leaves the United States and international questions arise. That river will have to go across there, and there is no telling where ultimately it will make a channel or what vast expenditure would be incurred. It would be like the Rio Grande, which has spread out for miles and miles, and it absolutely loses itself in the waste of surrounding sands until not a drop of water is to be found in its proper bed. So this would happen here unless the levees are repaired and the river confined within some reasonable limits.

Mr. McCUMBER. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Arizona yield to the Senator from North Dakota?

Mr. SMITH of Arizona. I am very glad to yield.

Mr. McCUMBER. If I understand the Senator correctly, this is purely a reclamation project. The lien which is laid upon the land is a lien the consideration of which is to give the holders of the land the use of the water. It so happens that the charges have been three or four times as great as they expected they would be. If I now understand the Senator's position, he desires to relieve the lands entirely from the liens even though they may receive some benefits. Should we re-

lieve them from all of them, or should they be relieved from a portion, or what proportion?

Mr. SMITH of Arizona. As I understand the Senator, he is mistaken if he thinks I am attempting to relieve them from any of the reclamation work. They expect to bear that burden, great as it is, but it must be confined to a reasonable necessary cost. I am trying to keep this money that the Reclamation Service has spent for the Government in building levees on the banks of the Colorado River and aiding ultimately in making it a navigable stream, so that that charge shall not rest on the farmers. I am not complaining of the increased cost of the project at this time, but I am claiming that this charge fall upon the lands. Some of these farms are away from the river and its overflow would never touch them. Yet this charge rests on all of them. It was the duty of the Government primarily to keep the river within bounds anyhow, and the Government has to do it under every rule of economy and good sense.

Mr. McCUMBER. If I understand the Senator correctly, there is another cost in addition to the cost of the Reclamation Service of over \$600,000 that would in addition be made a lien upon their land. Under what law would that be made a lien upon their land?

Mr. SMITH of Arizona. Because under the irrigation law the contract with these water users is that the cost of the enterprise becomes a lien on the land. They have taken this money from the irrigation fund and have applied it to the Government needs, as well as the farmers' needs, and it is proposed to place this burden on these farmers instead of on the United States Treasury.

Mr. McCUMBER. Then it really comes, as I stated, under the Reclamation Service, and there is supposed to be a corresponding benefit, but the cost is so heavy that it would be impossible for the farmers benefited to bear it. That is true of quite a number of our Reclamation Service projects, but I do not know how we can rectify that mistake upon the floor of the Senate without some general law that will relieve them according to the necessities of the conditions.

Mr. SMITH of Arizona. I do not know of any such conditions anywhere else in the United States. All of us know that it has cost more than we expected. Certainly it is not from an act of God that the farmer expected to insure the United States. You will never develop the West by such action as this.

Mr. SMOOT. I wish to ask the Senator if, before this money was spent by the Reclamation Service, the water-users' association gave its consent for the spending of the money for the revetment of the banks of the river?

Mr. SMITH of Arizona. I do not know. I would say, that to my mind it would make no earthly difference; they would consent to anything when they had gotten into a place where they were about to be drowned. Duress is a defense against any contract.

Mr. SMOOT. To me it would make a great difference, of course, because if the water-users' association had requested the Reclamation Service to do that work and saw it was absolutely necessary, that at least would relieve the Reclamation Service, as it undertook the work to protect the water-users' land, because of the fact that they were requested by them and had agreed with them to give a lien upon the land for the repayment of the money.

Mr. SMITH of Arizona. If I knew the facts I would answer the Senator with perfect frankness. I imagine, and it is merely imagination, that the irrigation managers on the part of the Government saw this condition, and I have no doubt immediately themselves, without asking anybody, attempted to correct it. But whether they first exacted consent of the water users before acting makes, to my mind, very little difference. It had to be done, and done quickly, and the cost in justice is properly chargeable to the United States Treasury, or, if you prefer, to the reclamation fund as a loss, rather than that the farmers should bear the damage.

Mr. ROOT. Mr. President, is not this the real difficulty, that the managers of this reclamation project have undertaken to charge up against the users of water expenditures which ought not to be charged to that irrigation project?

Mr. SMITH of Arizona. That is what I think in this case. I do not know but that the emergency might have justified the service in doing it, but I do know that these struggling men ought not to be forced to bankruptcy in saving the Treasury of the United States from an obligation resting of right and under every sense of justice on it. The Colorado is a navigable river. It belongs to the United States. The people of Arizona have no right to control it. It is the duty of the Government to keep it within its banks.

Mr. ROOT. The emergency might have justified the service without making it the part of an irrigation project. I should feel disposed to go with the Senator from Arizona upon such a proposition, but I do not think that we are in possession of the data upon which to act here in this way. With the knowledge of the facts that I have, while feeling disposed to go with the Senator on his proposition, I do not think that the charge for controlling the great stream of the Colorado River ought to be treated as a part of an irrigation project. Just how much or how little ought to be taken out of that lien, whether it all ought to be taken out or a part taken out, it seems to me we can not determine here.

I hope the Senator will not press it.

Mr. WORKS. Mr. President, unfortunately I was out for a few minutes and I did not hear this proposed amendment. I should be glad to have it read.

The PRESIDENT pro tempore. The amendment will be again read.

The SECRETARY. On page 83, after line 7, insert:

That all sums of money heretofore expended on the east side of the Colorado River in revetment and levee construction work under the Yuma irrigation project in Arizona and now carried as a charge against and a lien on the farms of the settlers under said project be, and the same is hereby, declared a charge against the Treasury of the United States, and that the said charge shall not diminish the irrigation fund in the Treasury.

Mr. WORKS. Mr. President, the matter of improvement of the Colorado River is one in which I have a great deal of interest. The Imperial Valley, one of the richest valleys in the State of California, borders on this stream just below this reclamation project.

During the last session of Congress the President sent in a special message calling attention to the condition of the river and recommending that an appropriation be made for its improvement. The Secretary of the Interior took the same position with respect to it.

It was late in the session I appeared before the Appropriations Committee and attempted to secure an appropriation by that means. I was told at that time that it was a matter that should be presented to the Commerce Committee in connection with the river and harbor bill.

During this session I presented the matter to the Commerce Committee, and I was told there that it would have to be taken up in some other way; I do not know just why. Then I was advised that the only proper way to reach it would probably be by a special bill for that purpose.

I am exceedingly anxious to take such steps as will bring about the permanent improvement of this stream, so that navigation may be improved and at the same time the property of people owning land bordering upon the stream protected. It is a positive duty that rests upon the Government to see that this river is improved. The President recognized that fact. The Secretary of the Interior recognized the fact that it was necessary. The Government has proceeded in part to improve the condition of the river and has spent considerable money there, but has left it in an imperfect condition that needs attention.

With respect to this particular amendment, I am not advised as to whether it is one that the Senate ought to entertain or not; but I do want to call the attention of the Senate to the fact that this river does need improvement and that some appropriation ought to be made for that purpose, so that it may be improved in a permanent way that will put the river in proper condition.

It is a very treacherous stream. It changes its course from time to time whenever storms occur. Senators know that at one time it submerged practically the whole of the Imperial Valley, costing millions and millions of dollars. I do hope that when the proper time comes some appropriation may be made and this improvement entered upon in a practical way; but I have no disposition to bring the matter before the Senate by way of an amendment for the simple reason that it would involve discussion, and it is a matter that I think should be taken up separately and determined after proper discussion of the question.

Mr. BORAH. Mr. President, it seems to me it might be safe to let this amendment go on the bill, in view of the fact that everyone seems to concede that this is a river that ought to be cared for by the National Government, and that this work which has been done has been done for the purpose of keeping the river within its banks. Certainly we ought to agree upon the proposition that we ought not to impose this extraordinary burden upon the settlers on this reclamation project. While, technically speaking, it might not belong exactly to this bill, it is altogether certain that if it does not go on this bill it will never go in time to help the settlers, because they will be driven from their places.

It seems to me that we can very well afford to say that that portion of the money which has been expended for building embankments can be eliminated from the charge as against these settlers. Those settlers will not, as they are being driven to give up their homes, appreciate the beauties of parliamentary laws as they present themselves to us.

Mr. CRAWFORD. Mr. President, as is very often the case, a statement which naturally appeals and causes a responsive chord among Senators comes at a time when so far as necessary information is concerned the Senate is without it, and so far as that sort of preliminary investigation that should be made before legislative action is taken, we find there has been none.

I think this would be a very serious step to take. It is admitted that this was a part of a reclamation project. I understand it is admitted that this work was done as a part of a reclamation project, but that it is putting too great a burden on those within that project.

From statements which have been made it would seem that that is true, and that there are equities here; but they have not been considered by any committee; there have been no witnesses; there has been no investigation; there has been no committee report; there has been no governmental report; and in an appropriation bill to act without any information of that character, and upon simply a general impression that appeals to one, I think is hardly the way to proceed. I hope the Senator from Arizona will not press the amendment here.

Mr. SMITH of Arizona. Mr. President, after consultation with many Senators who seem to be in sympathy with my purpose, and to relieve the Senate of the pressure now on it, I will take the vote as already announced by the Chair and not proceed further with it.

But before I take my seat I want to say to the Senator from South Dakota that the amendment was drawn in the way it is for the reason that I intended to cover, as the record shows in the department, exactly the amount of money expended for this particular work. I have not named the specific sum because the records of the department would show the specific sum, and the estimate would be made upon the revetment and levee work alone.

So while the amount was not as certain, probably, as it ought to have been in the amendment, it was so easily capable of being made certain that the amendment would not have endangered the Treasury.

The PRESIDENT pro tempore. The amendment is not agreed to.

Mr. NELSON. In view of meeting the contingency developed by this objection I offer an amendment to be put in the column of surveys, so that no appropriation would be made for the Colorado River in the river and harbor bill until there has been an examination made by the engineers of the War Department. I offer an amendment to place this river on the list of surveys, and when we get the information from the War Department we will know what to do and what ought to be done. It is to come in at the end of line 8, page 76.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. After line 8, page 76, insert:

Colorado River, with a view of developing and improving navigation.

The amendment was agreed to.

Mr. NEWLANDS. Mr. President, I offer an amendment regarding the river regulation board. I ask that it be read and that the question of its order be submitted to the Senate.

I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Senator suggests the absence of a quorum, and the roll will be called.

The Secretary called the roll, and the following Senators answered to their names:

|              |              |              |              |
|--------------|--------------|--------------|--------------|
| Ashurst      | Dillingham   | Martin, Va.  | Smith, Md.   |
| Borah        | Dixon        | Myers        | Smith, Mich. |
| Burns        | Fall         | Nelson       | Smith, S. C. |
| Brandeggee   | Fletcher     | Newlands     | Smoot        |
| Briggs       | Gallinger    | Oliver       | Stephenson   |
| Bristow      | Gamble       | Owen         | Sutherland   |
| Bryan        | Gronna       | Page         | Swanson      |
| Burnham      | Hitchcock    | Paynter      | Thomas       |
| Burton       | Jackson      | Percy        | Thornton     |
| Catron       | Johnson, Mo. | Perkins      | Tillman      |
| Chamberlain  | Jones        | Pittman      | Townsend     |
| Clapp        | Kavanaugh    | Poindexter   | Webb         |
| Clarke, Ark. | Kenyon       | Richardson   | Webb         |
| Crawford     | La Follette  | Root         | Williams     |
| Culbertson   | Lea          | Sheppard     | Works        |
| Cullom       | Lippitt      | Simmons      |              |
| Cummins      | McCumber     | Smith, Ariz. |              |
| Curtis       | McLean       | Smith, Ga.   |              |

The PRESIDENT pro tempore. On the call of the roll 69 Senators have answered to their names. A quorum is present. The Senator from Nevada [Mr. NEWLANDS] offers an amendment, which will be stated.

Mr. NEWLANDS. Mr. President, instead of offering the amendment which I before offered and requested that the question be submitted to the Senate as to its being in order, I offer a condensed statement, which at present proposes to make no appropriation beyond the expenses of investigation and plans, providing \$500,000 for such investigation and plans, but providing that the plans shall be made in such a way as to involve an expenditure of \$50,000,000 annually, commencing on the completion of the Panama Canal and extending over a period of 10 years.

I will ask the Secretary to read the amendment which I send to the desk. I will state that the amendment is on the desks of Senators, having recently been printed.

The PRESIDENT pro tempore. The amendment proposed by the Senator from Nevada will be stated.

The SECRETARY. It is proposed to insert the following:

A commission, to be known as the river regulation commission, consisting of the Secretary of War, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce and Labor, two Members of the Senate, to be selected by the President of the Senate, and two Members of the House of Representatives, to be selected by the Speaker, is hereby created and authorized to bring into coordination and cooperation with the Corps of Engineers of the Army the other scientific or constructive services of the United States that relate to the study, development, and control of waterways and water resources and subjects related thereto, and to the development and regulation of interstate and foreign commerce, with a view to uniting such services through a board or boards in investigating questions relating to the development, improvement, regulation, and control of navigation as a part of interstate and foreign commerce, including therein the related questions of irrigation, forestry, swamp-land reclamation, clarification of streams, regulation of flow, control of floods, utilization of water power, prevention of soil waste, cooperation of railways and waterways, and promotion of transfer facilities and sites, and in forming comprehensive plans for the development of the waterways and water resources of the country for every useful purpose by cooperation between the United States and the several States, municipalities, communities, corporations, and individuals within the jurisdiction, powers, and rights of each, respectively, and with a view to assigning to the United States such portion of such development, promotion, regulation, and control as can be properly undertaken by the United States by virtue of its power to regulate interstate and foreign commerce and by reason of its proprietary interest in the public domain, and to the States, municipalities, communities, corporations, and individuals such portion as properly belongs to their jurisdiction, rights, and interests, and with a view to properly apportioning costs and benefits, and with a view to so uniting the plans and works of the United States within its jurisdiction, and of the States and municipalities, respectively, within their jurisdictions, and of corporations, communities, and individuals within their respective powers and rights, as to secure the highest development and utilization of the waterways and water resources of the United States; and such river regulation commission is authorized to appoint as members of such board or boards such engineers, transportation experts, experts in water development, and constructors of eminence as it may deem advisable to employ in connection with such plans. Such plans shall involve the expenditure by the United States of \$50,000,000 annually, commencing on the completion of the Panama Canal and extending over a period of 10 years. And for the expenses of such organization, investigation, and plans the sum of \$500,000 is hereby appropriated.

Mr. NEWLANDS. Mr. President, individually I believe that the work of construction should commence immediately.

Mr. LIPPITT. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Nevada yield to the Senator from Rhode Island?

Mr. LIPPITT. I raise the point of order—

Mr. NEWLANDS. Mr. President, I did not yield for the point of order, though I will yield for a question.

The PRESIDENT pro tempore. The Senator from Nevada is entitled to the floor.

Mr. NEWLANDS. Mr. President, I believe the time has come for work. I believe that it has been absolutely developed to the satisfaction of the entire American people that the methods that have been employed for a hundred years in the regulation and control of our rivers are absolutely deficient. I believe that the public mind is made up that this work should proceed immediately, involving cooperation between the scientific services, cooperation between the Nation and the States, and involving an ample fund, amounting to at least \$50,000,000 annually for a period of 10 years, this work to follow and supplement the great work upon the Panama Canal; but I find such opposition—not on the outside, but on the inside, of Congress—to entering immediately upon such constructive work, that I yield to the demand for further information upon the subject. So I have condensed the legislation which I have sought upon this subject in a simple amendment, which provides for the organization of a river regulation commission, composed of four Secretaries in the President's Cabinet—the Secretary of War, the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce and Labor—who have jurisdiction of the various services that relate in any way with water, and also two Members of the Senate and two Members of the other House, with a view to utilizing the services of distinguished engineers and constructors, and also with a view of coordinating these services in such a way as to secure comprehensive plans involving this large expenditure of money within 10 years after the completion of the Panama Canal.

This amendment merely provides for the expenditure of only the moderate sum of \$500,000 in the making of the plans and investigations in order to convince Congress upon a subject concerning which the country is already convinced.

Now, Mr. President, I ask for a vote upon this amendment, which is simply a continuance of the present work of investigation going on under the river and harbor act, and it seems to me it is entirely germane.

Mr. TOWNSEND. Mr. President, may I ask the Senator why he terms it a "river regulation commission"? Is it not intended to cover the investigation of all waterways?

Mr. NEWLANDS. Of all waterways.

Mr. TOWNSEND. Then, why use that term?

Mr. NEWLANDS. Of all the rivers in the country. I want to distinguish it from harbor improvements.

Mr. LIPPITT. I make the point of order that the amendment is general legislation and not pertinent to the pending bill.

Mr. NEWLANDS. Well, Mr. President, if the Chair has any doubt upon that question, I should like to have it submitted to the Senate.

The PRESIDENT pro tempore. The Senator from Rhode Island makes the point of order on what ground?

Mr. LIPPITT. That the proposed amendment is general legislation and can not be attached to an appropriation bill.

The PRESIDENT pro tempore. The Chair is constrained to sustain the point of order.

Mr. NEWLANDS. I ask that the question be submitted to the Senate, Mr. President, and I do so at the request of numerous Senators.

The PRESIDENT pro tempore. The Chair is in no doubt on the point at all, and hence feels constrained to decide it.

Mr. NEWLANDS. Then, I appeal from that decision, Mr. President.

The PRESIDENT pro tempore. The Senator from Nevada appeals from the decision of the Chair. The question is, Shall the decision of the Chair stand as the judgment of the Senate? [Putting the question.] By the sound the "ayes" appear to have it.

Mr. NEWLANDS. I ask for the yeas and nays.

Mr. MYERS. I suggest the absence of a quorum, Mr. President.

The PRESIDENT pro tempore. The Senator from Montana suggests the absence of a quorum. The roll will be called.

Mr. OLIVER. Mr. President, I inquire if business has intervened since the last roll call?

The PRESIDENT pro tempore. The Chair thinks the roll should be called.

The Secretary called the roll, and the following Senators answered to their names:

|              |              |                |              |
|--------------|--------------|----------------|--------------|
| Ashurst      | Cummins      | Lippitt        | Root         |
| Bankhead     | Curtis       | Lodge          | Sheppard     |
| Borah        | Dillingham   | McCumber       | Simmons      |
| Bradley      | Dixon        | McLean         | Smith, Ariz. |
| Brady        | Fletcher     | Martin, Va.    | Smith, Ga.   |
| Brandeggee   | Foster       | Martine, N. J. | Smith, Md.   |
| Briggs       | Gallinger    | Myers          | Smith, Mich. |
| Bristow      | Gamble       | Nelson         | Smith, S. C. |
| Bryan        | Gore         | Newlands       | Smoot        |
| Burnham      | Gronna       | O'Gorman       | Stephenson   |
| Burton       | Guggenheim   | Oliver         | Swanson      |
| Catron       | Hitchcock    | Overman        | Thornton     |
| Chamberlain  | Jackson      | Owen           | Tillman      |
| Clapp        | Johnson, Me. | Page           | Townsend     |
| Clark, Wyo.  | Jones        | Percy          | Webb         |
| Clarke, Ark. | Kavanaugh    | Perkins        | Williams     |
| Crawford     | Kenyon       | Pittman        | Works        |
| Culberson    | La Follette  | Polndexter     |              |
| Cullum       | Lea          | Richardson     |              |

Mr. CLARK of Wyoming. My colleague, the Senator from Wyoming [Mr. WARREN], is detained from the Chamber by business of the Senate.

The PRESIDENT pro tempore. On the call of the roll 73 Senators have answered to their names. A quorum of the Senate is present. The Senator from Nevada appeals from the decision of the Chair.

Mr. CLAPP. Mr. President, I trust the Senator will withdraw his appeal. It is placing Senators in a position that is not at all pleasant. For one, I am heartily in favor of his proposition. The ruling of the Chair, however, is so manifestly just that I should have to vote to sustain the ruling, and consequently apparently vote against the amendment. It is not a test of the strength of it, and I trust the Senator will withdraw his appeal.

Mr. BRISTOW. Mr. President, I trust the Senator from Rhode Island [Mr. LIPPITT] will withdraw the point of order. It seems to me that this amendment is as germane as many others that have been adopted, and certainly it is as much in order as many other amendments which have been passed upon. It seems to me, under the circumstances, that the Senator from Nevada [Mr. NEWLANDS] has a right to an expression of the

Senate on the merits of his amendment. I dislike to vote to overrule the Chair, but, under the circumstances in which this comes before the Senate, it seems to me that, having let in these other amendments, it would be certainly unjust not to let this one in, or at least to have a vote upon it.

Mr. ROOT. If he is at liberty to do so, I hope the Senator from Rhode Island [Mr. LIPPITT] will withdraw his point of order, and let us have a vote. The fact is that it is apparent that the Senate is becoming very restive over the undue proportion of the time remaining that this river and harbor bill is taking. The various discussions upon it are extending so that it is going to crowd out a lot of other appropriation bills, and that is the real trouble. I think the Senate will be ready to vote on this amendment promptly; and I hope the Senator from Rhode Island will withdraw his point of order, with the understanding, which I think everybody will agree to, that we shall vote.

Mr. NEWLANDS. I should be very glad to stop further discussion if we could have a vote on this amendment.

Mr. BRANDEGEE. Mr. President, a parliamentary inquiry. Were the yeas and nays ordered on the appeal from the ruling of the Chair?

The PRESIDENT pro tempore. They were not.

Mr. LIPPITT. Mr. President, referring to what the Senator from New York has said, that the Senate is becoming restless over the time that is being consumed on this bill, I recognize that situation. His proposal is that I shall withdraw this point of order so that a vote may be taken upon the proposition itself for the purpose of saving time. I can see no better way of saving time than to have the appeal on the point of order voted upon by the Senate. I think the point of order is manifestly well taken. The Chair has ruled that, in his opinion, it is well taken; and if it is simply a question of saving time, I know of no better way to do it than to take a vote.

Mr. NEWLANDS. Mr. President, I will state that I believe the majority of this body favor this amendment. I do not wish to waste the time of the body in discussion. I shall be glad to vote, and vote immediately, upon it. I appeal to the Senator from Rhode Island to withdraw his point of order. I do not wish to urge this appeal, because many Senators have approached me and told me that while they were for this measure they did not feel that they could vote to overrule the decision of the Chair. Now, the question is, What was the decision of the Chair? Am I appealing from a decision not to submit this question to the Senate, or am I appealing from the decision of the Chair as to whether this is in order? I would gladly appeal from the decision of the Chair as to the former, but I would not like to press the appeal from the latter, because I know there are many Senators who favor this measure and who would vote for it, and yet who would be disposed to sustain the Chair upon the point of order. I would not wish, therefore, to appear to have an adverse vote that was not deserved.

I appeal to the Senator from Rhode Island to let us have a vote on this question, and let us put the bill through and let it go to the House, and let them consider the matter in conference.

Mr. MYERS. Mr. President, will the Senator from Nevada yield to me for a moment?

Mr. NEWLANDS. Yes.

Mr. MYERS. A few minutes ago the Senate, by a vote of the Senate, declared that the Connecticut River dam bill was a proper amendment to offer here. I have great respect for the Chair and the rulings of the Chair, and seldom if ever question them. According to my recollection, however, the Senate voted that the Connecticut River dam bill was a proper amendment, that it was not out of order; and it seems to me a precedent of that kind set by the Senate ought to be good for one day.

Mr. LIPPITT. Mr. President—

Mr. BRANDEGEE. Mr. President—

The PRESIDENT pro tempore. The Senator from Rhode Island first addressed the Chair.

Mr. LIPPITT. At the request of several Senators and with the understanding that the vote on this measure is to be taken without further debate I will withdraw the point of order.

The PRESIDENT pro tempore. The point of order is withdrawn.

Mr. McCUMBER. I rise to a point of order.

The PRESIDENT pro tempore. The Senator will state it.

Mr. McCUMBER. It is that the Chair having once ruled that the point of order made was correctly made, and a vote being called for again upon that question, the Senator can not withdraw his point of order. It has already been decided.

The PRESIDENT pro tempore. The Chair is of opinion that the Senator can withdraw it by unanimous consent. Is there objection?

Mr. McCUMBER. I object.

Mr. POINDEXTER. Mr. President, a parliamentary inquiry. The PRESIDENT pro tempore. The Senator will state it.

Mr. POINDEXTER. As long as the question is pending upon an appeal from the decision of the Chair, the matter not having been finally determined, can not the Senator who made the point withdraw it? I should think he would have the privilege of withdrawing it so long as it is pending and undecided upon the appeal which has been taken.

Mr. BRANDEGEE. I make the point of order that an appeal from the decision of the Chair must be decided without debate.

The PRESIDENT pro tempore. The Senator is correct in that.

Mr. NEWLANDS. Mr. President, I rise to a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state it.

Mr. NEWLANDS. Is the appeal from the decision of the Chair sustaining the point of order, or is it from the decision of the Chair refusing to submit the question to the Senate?

The PRESIDENT pro tempore. The Senator from Nevada [Mr. NEWLANDS] offered an amendment. The Senator from Rhode Island [Mr. LIPPITT] made the point of order that it was obnoxious to Rule XVI, being general legislation. The Chair sustained the point of order, and the Senator from Nevada took an appeal from the decision of the Chair.

Mr. NEWLANDS. Then I made a motion to submit that question of order to the Senate.

The PRESIDENT pro tempore. The Senator could not make that motion under the rule. It could not be entertained.

Mr. NEWLANDS. Very well, Mr. President. Then I withdraw my appeal.

The PRESIDENT pro tempore. The appeal is withdrawn.

Mr. POINDEXTER. A further parliamentary inquiry, Mr. President.

The PRESIDENT pro tempore. The Senator will state it.

Mr. POINDEXTER. Is not the question now before the Senate the point of order insisted upon by the Senator from North Dakota [Mr. McCUMBER]?

The PRESIDENT pro tempore. That has been settled.

Mr. NEWLANDS. In view of the fact that a number of Senators have indicated to me that they wished to support this amendment and to support the bill of which this amendment is a condensation, and yet that they would feel constrained to vote to sustain the decision of the Chair upon the appeal, I withdraw my appeal.

The PRESIDENT pro tempore. Is there objection to the Senator withdrawing his appeal? The Chair hears none, and the appeal is withdrawn.

Mr. CUMMINS. I desire to say just one word. I am very sorry the Senator from Nevada has withdrawn his appeal, because I think the point of order was not well taken, and I was prepared to vote with the Senator on that proposition. But, as he has withdrawn it, I have nothing more to say.

The PRESIDENT pro tempore. The bill is still in the Committee of the Whole and open to amendment.

Mr. OWEN. Mr. President, I offer the following amendment:

That at any time prior to 10 days after the next ensuing regular session of Congress, the President of the United States shall have the right of veto as to any item in this act by returning the same to Congress with his disapproval.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. It is proposed to add at the end of the bill the following:

That at any time prior to 10 days after the next ensuing regular session of Congress the President of the United States shall have the right of veto as to any item in this act by returning the same to Congress with his disapproval.

Mr. NELSON. Mr. President, I make the point of order against that. We can do a great deal in the river and harbor bill, but we can not amend the Constitution of the United States.

The PRESIDENT pro tempore. On what ground does the Senator make the point of order?

Mr. NELSON. I make it on the ground that it is general legislation.

The PRESIDENT pro tempore. The point of order is sustained.

Mr. OWEN obtained the floor.

Mr. BRANDEGEE. Mr. President, I rise to a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state it.

Mr. BRANDEGEE. Before the bill goes to the Senate, I wish to ask whether, in order to get a separate vote on any

amendment adopted by the committee, a Senator must reserve that right?

The PRESIDENT pro tempore. That is the rule.

Mr. BRANDEGEE. Then I will state that if any separate vote shall be asked upon the amendment concerning the Connecticut River dam, I shall demand the same separate vote upon the Minnesota Mississippi River amendment, but not otherwise.

Mr. WILLIAMS. If it is necessary to give notice of a separate vote upon the Connecticut River dam amendment, I give notice now that it will be demanded.

Mr. OWEN. Mr. President, the objection which I feel to this bill generally is that it seems to contain so many items that are of purely local importance and which are not apparently required by the general welfare or in the matter of providing transportation for the people of the United States in a broad sense. I notice, for instance, in this bill 31 items relating to various creeks and other streams—some of them of importance, no doubt—of New Jersey. I merely mention that as illustrative. A number of them, however, must be of purely local character.

For instance, I call attention to the item of \$33,500 on page 11 for improving Keyport Harbor, for improving Matawan Creek, for improving Raritan River, for improving South River, for improving Shoal Harbor, for improving Compton Creek, and for improving Cheesapeake Creek; \$20,000 for improving Raritan Bay; \$1,600 for improving Absecon Creek; \$45,000 for improving Absecon Inlet; \$5,000 for improving Alloway Creek; \$5,000 for improving Cooper River; \$15,443 for improving Elizabeth River; \$50,000 for improving Hackensack River; \$15,000 for improving Mantua Creek; \$30,000 for improving Maurice River; \$300,000 for improving Newark Bay and Passaic River; and \$13,000 for improving Raccoon Creek.

I have no doubt that is a very important stream—probably much more important than the Arkansas River, which is a thousand miles long, and runs through a number of States, but which is practically not provided for at all in this bill.

Then there is an item of \$15,000 for Salem River, \$10,000 for Shrewsbury River, \$1,000 for improving Toms River, \$5,000 for improving Tuckerton Creek, and \$3,000 for improving Woodbridge Creek.

This bill is full of items of that kind. I do not know where these important national demands come from, but I have just ground to believe that the form of the bill is due to the very great activity of individuals who are concerned in promoting the private interests of some small locality at the public expense and, incidentally, at the expense of the people of Oklahoma. I am opposed to the form of this bill; I am opposed to the whole principle upon which it seems to proceed. It seeks to serve a number of unimportant interests of a local character; and by engaging the interest of Members of either House in that way it is sought to pass this bill through both Houses and put an enormous expenditure upon the people of the United States without serving any adequate national purpose. Therefore I have introduced this proposed amendment to allow the President of the United States the right to disapprove any particular item of the bill within the time stated.

I understand the point of order made by the Senator from Minnesota [Mr. NELSON], who, in his interest in this bill, sees a great danger to the Constitution of the United States and would make the point of order that we have no right to amend the Constitution of the United States by an amendment of this character. The Constitution of the United States gives a right of veto to the President of the United States whether we will or whether we will not; but the Constitution of the United States also places the power of legislation in this body—in Congress. We have a right here to make a law, and we have a right to put on this bill a proviso that the head of the executive branch of the Government may return any item in the bill with his disapproval. I wish to take the voice of the Senate upon that question.

I should like to know what the ruling of the Chair is—whether or not this amendment is ruled out of order.

The PRESIDENT pro tempore. The Chair sustained the point of order on the ground that the Senator's amendment was general legislation on an appropriation bill.

Mr. OWEN. I appeal from the ruling of the Chair on the ground that the Senator from Ohio [Mr. BURTON] having very eloquently disclosed and accepted the fact that this is not an appropriation bill, and the Senate having confirmed that view on the Connecticut River item, the third paragraph of Rule XVI does not apply.

The PRESIDENT pro tempore. The Chair feels constrained, on that point, to rule that it is an appropriation bill according to the rules of the Senate. The Senator from Oklahoma appeals from the decision of the Chair on the point of order.

Mr. THOMAS. On that I call for the yeas and nays.

The yeas and nays were ordered.

The PRESIDENT pro tempore. Senators who are of the opinion that the ruling of the Chair was correct will, when their names are called, answer "yea." Those opposed will answer "nay."

Mr. CLARKE of Arkansas. Mr. President, I did not quite understand the form in which the Chair submitted the matter.

The PRESIDENT pro tempore. The question is, Shall the decision of the Chair stand as the judgment of the Senate?

Mr. CLARKE of Arkansas. Oh, yes.

The Secretary proceeded to call the roll.

Mr. SMITH of Michigan (when his name was called). I desire to transfer my pair with the junior Senator from Missouri [Mr. REED] to the senior Senator from Pennsylvania [Mr. PENROSE], if I have the consent of the Senator from Mississippi [Mr. WILLIAMS].

Mr. WILLIAMS. Very well.

Mr. SMITH of Michigan. I vote "yea."

Mr. WILLIAMS (when his name was called). Being relieved from my pair with the senior Senator from Pennsylvania [Mr. PENROSE] by the announcement of the Senator from Michigan [Mr. SMITH], I desire to vote. I vote "yea."

The roll call was concluded.

Mr. FOSTER. I have a general pair with the junior Senator from Wyoming [Mr. WARREN]. In his absence I withhold my vote.

Mr. DU PONT. I should like to inquire whether the senior Senator from Texas [Mr. CULBERSON] has voted.

The PRESIDENT pro tempore. That Senator has not voted.

Mr. DU PONT. I have a general pair with the senior Senator from Texas. I will therefore withhold my vote.

Mr. CULLOM. I have a general pair with the junior Senator from West Virginia [Mr. CHILTON]. I transfer that pair to the junior Senator from Massachusetts [Mr. CRANE] and vote "yea."

Mr. CLARK of Wyoming (after having voted in the affirmative). I will ask if the senior Senator from Missouri [Mr. STONE] has voted?

The PRESIDENT pro tempore. The Chair is informed that that Senator has not voted.

Mr. CLARK of Wyoming. I withdraw my vote. I am paired with that Senator.

The roll call resulted—yeas 64, nays 5, as follows:

#### YEAS—64.

|              |                |                |              |
|--------------|----------------|----------------|--------------|
| Bankhead     | Cummins        | Lippitt        | Richardson   |
| Bourne       | Curtis         | Lodge          | Root         |
| Brady        | Dillingham     | McCumber       | Sheppard     |
| Brandegee    | du Pont        | McLean         | Simmons      |
| Briggs       | Fall           | Martin, Va.    | Smith, Ga.   |
| Bristow      | Fletcher       | Martine, N. J. | Smith, Mich. |
| Bryan        | Gamble         | Nelson         | Smith, S. C. |
| Burnham      | Gronna         | O'Gorman       | Smoot        |
| Burton       | Guggeheim      | Oliver         | Stephenson   |
| Cañon        | Jackson        | Overman        | Swanson      |
| Chamberlain  | Johnson, Me.   | Page           | Thornton     |
| Clapp        | Johnston, Ala. | Percy          | Tillman      |
| Clarke, Ark. | Jones          | Perkins        | Twinsend     |
| Crawford     | Kavanaugh      | Pittman        | Wetmore      |
| Culbertson   | Kenyon         | Poindexter     | Williams     |
| Cullom       | La Follette    | Pomerene       | Works        |

#### NAYS—5.

|         |      |        |      |
|---------|------|--------|------|
| Ashurst | Owen | Thomas | Webb |
|---------|------|--------|------|

#### NOT VOTING—26.

|             |           |              |            |
|-------------|-----------|--------------|------------|
| Bacon       | Dixon     | Lea          | Smith, Md. |
| Borah       | Foster    | Newlands     | Stone      |
| Bradley     | Gallinger | Paynter      | Sutherland |
| Brown       | Gardner   | Penrose      | Warren     |
| Chilton     | Gore      | Reed         | Watson     |
| Clark, Wyo. | Hitchcock | Shively      |            |
| Crane       | Kern      | Smith, Ariz. |            |

The PRESIDENT pro tempore. Upon the question, Shall the decision of the Chair stand as the judgment of the Senate, the yeas are 64 and the nays 5, and the point of order is sustained.

Mr. MARTINE of New Jersey. Mr. President, I was absent from the Chamber during the remarks of the Senator from Oklahoma [Mr. OWEN], but I feel that I would be utterly an inefficient Senator if I should keep my mouth closed after the unfortunate reference made in a belittling way to the appropriations for the Commonwealth which I in part represent.

I realize that many of these names may not seem dignified to the Senator from Oklahoma—Raccoon Creek, Toms River, Shrewsbury River, Tuckerton Creek, Woodbridge Creek. How blessed Oklahoma would be if it had the most insignificant one of these creeks wandering through that Commonwealth.

Mr. OWEN. We would be glad to have them.

Mr. MARTINE of New Jersey. I say, Mr. President, God knows far be it from me to advocate a pork-barrel measure. I

do not believe in profligacy. I was born and I have lived in frugality, and I would be the last representative of my State to advocate a scheme simply seeking the public crib for the expenditure of money without reference to results. I am opposed to any measure that savors of pork-barrelism. I feel that I represent an intelligent, industrious constituency, but at the same time while I represent a frugal constituency I do not represent a parsimonious, mean, and narrow constituency. We live in a Commonwealth that has progressed, a Commonwealth that has contributed much to the glory and history of this great Nation in the past, and a Commonwealth that to-day is carving a place in the history of this land. In manufacturing we are to-day about third in the States of this Nation.

My friend from Oklahoma refers in a belittling way to these various appropriations, such as that for the Elizabeth River improvement. According to the report submitted the amount is \$15,543. Let me say—and I am proud of it—that I appeared before the committee of the House and urged that that appropriation should be \$50,000, and I will state the reason why I did so.

I realize that on Kill Van Kull and Elizabeth River, passing up from the great harbor of New York City, there is a tonnage each year that outstrips the tonnage that passes through the great Suez Canal. The great contest is for cheaper transportation, cheaper bread and butter. The wharves and docks in the great city of New York, my birthplace, are fairly congested, until now the problem is where can the great ships that are building for the maritime commerce of the world find a mooring. There seems to be no hope on the New York side; but just across the Hudson River the State of New Jersey offers them an abiding place, and the world's commerce, in fact, may be taken care of there. We ask that the channel of Kill Van Kull and the improvement of Elizabeth River may have attention in order to afford better shipping facilities, and thereby cheaper food—cheaper bread to the country and to the world.

Remember, Mr. President, New Jersey is fortunately situated. It is at the very gateway of the commerce of this great Nation. All the commerce of Europe, and even that of Oklahoma and the mining industry of the far West passing over the great continental railroads, must find a shipping point on the New Jersey shore. We are the dispensing point not only for this country but for the great foreign shipping of the country.

Here, for the Newark Bay and the Passaic River improvement, \$300,000 is appropriated. Remember that is right at the threshold of the great metropolis of this country. The city of Newark has a population to-day of about 575,000 people. We are a busy, thriving hive of industry. Everything in the manufacturing line, from a cambric needle to a locomotive, is manufactured there. It is a great shipping point.

But in the hope that we may be greater, in the hope that we may facilitate the commerce of this great Nation, and at the same time advance the welfare of the Commonwealth of New Jersey and aid our fellow citizens throughout the length and breadth of this country, we press this improvement with all reason and with all fairness and with all justice.

Improving Shrewsbury River and its maintenance, a paltry sum of \$10,000 is appropriated. The shipping that passes through there each year runs into hundreds of thousands of tons.

Toms River is not dignified much in name, but only a pittance of \$1,000 is asked for that improvement. That is one of the paltry sums that my friend would sneeringly refer to.

Woodbridge Creek is within 8 miles of my home. "If it were called Woodbridge River it would have more character, for the name 'creek' seems insignificant. Let me say to you that Woodbridge Creek and the whole section thereabout is fairly laden with a clay product that is manufactured into almost every conceivable shape that is known to civilization to-day. Thousands upon thousands of tons each year are shipped from that point, and more would be shipped with more liberal facilities.

I have no cavil with the Senator from Oklahoma, but, oh, that he might get out and with a bigger, broader lens see the splendid coast of the great country of which he and I are humble members.

Mr. OWEN. Mr. President, I wish to make my profound acknowledgment to my well-beloved friend from New Jersey, and to offer, if I may be permitted to do so, my humble and complete apology to Raccoon Creek.

If the Senator had been present he would have learned that in pointing out the thirty-odd items relating to New Jersey I was simply using it for the purpose of illustrating the manner in which some States are abundantly provided for, while others are not provided for at all, and that the bill is composed of items of local value but of no national importance.

There was no purpose, of course, to reflect upon the honorable Commonwealth of New Jersey, but the purpose was to speak on the general character of this bill, which takes up these various items and which provides, in what I believe a haphazard way, for this creek and that creek and the other creek, without having a comprehensive, clear-cut plan by which the national interests would be conserved in an important and well-digested plan.

My objection to this bill remains. I shall vote against it. I am opposed to this character of legislation. It has been repeated over and over again, and I believe that we ought to follow a policy laid out along the line which has been suggested by the Senator from Nevada [Mr. NEWLANDS], that we ought to have a certain amount of money which shall be used for such purposes and then distributed according to the national interests.

There was no purpose, I beg the distinguished Senator from New Jersey to believe, to reflect upon his noble Commonwealth, for which I have the highest respect, and for him personally I have a peculiar regard. But one is obliged in speaking of a bill of this kind to illustrate it with some of the items from it, and my eye fell upon the thirty-odd items for New Jersey, and I proceeded to illustrate with New Jersey. That is all there is in that.

Oklahoma is quite willing to have a development of our national waterways. Oklahoma is not willing to have the National Treasury invaded for the purpose of promoting local interests merely at the expense of the National Treasury. It is against that character of legislation, without intending to discriminate as to any particular item in the bill, that I referred to these various creeks. I could have taken some other State and illustrated it the same way, but that sufficed for my purpose.

Mr. BURTON. Mr. President, I do not think the criticisms of the Senator from Oklahoma are well founded. They rest upon the use of the name "creek" in this bill. There are some channels having that designation which have a very important commerce. For instance, Newtown Creek on Long Island, near the city of Brooklyn, in greater Manhattan, has a tonnage of 5,400,000 tons with a valuation of over \$190,000,000. Passaic River, leading to the city of Newark, to which the Senator from Oklahoma referred, has a tonnage of 2,200,000, with a value of \$62,000,000. The Raritan River, to which he referred somewhat slightly, has a tonnage of something over 1,000,000, with a value of \$64,000,000. All the small streams in New Jersey, some of them tributary to New York and some to Philadelphia, furnish a certain amount of interstate commerce. The extravagance in our river and harbor bills is not in that direction. These small streams can be improved at a comparatively limited cost; and while the question may be raised whether they are proper objects for appropriations from the Federal Government, this custom has been pursued for many years, and the improvements make it possible to ship products from one State to another, making a part of our interstate commerce.

Newtown Creek has a greater tonnage which is of greater value than that of the three sections of the Mississippi River. Raccoon Creek has almost as much tonnage as the whole of the Arkansas River. The danger of waste or extravagance is in the construction of locks and dams for the canalizing of rivers, for the improvement of great rivers—I do not wish at this late hour to mention which they are—where there is little prospect of developing an important commerce and the money is really devoted to the protection of private property bordering upon them.

Nevertheless, Mr. President, I can not vote for this bill as it now is. Most of it is made up of commendable items, but there is much that is objectionable. I must particularly criticize some of the precedents which it establishes. We have heard a great deal here in the last few days in regard to precedents. Now, I want to call attention to one, a provision adopted here on Saturday morning last.

The bill as it came from the House sought to extend the jurisdiction of the Mississippi River Commission from Cape Girardeau up to Rock Island. The Senate Committee on Commerce, recognizing the manifest impropriety of that, suggested, in place of the provision of the House bill, an examination with a view to a future report, for which purpose \$100,000 was to be appropriated. That proposition was discussed at great length here and a compromise was adopted which was worse than either. I want to call attention to its real significance:

The Mississippi River Commission shall make an examination of the Mississippi River from Cape Girardeau, Mo., to Rock Island, Ill., with a view to such improvements as will at the same time promote navigation, develop water power, and protect property adjacent to said river from damage by floods; and in making such examination con-

sideration shall be given and recommendations made as to plans for cooperation by the localities affected; and for the purpose of such examination—

So much is retained of the recommendation of the Senate committee, but that part of the provision appropriating the sum of \$100,000 is cut out. Now, let us see what is put in its place—

and for the building of such levees between said points upon the river in aid of navigation as may be found necessary or desirable by the commission and approved by the Chief of Engineers the sum of \$200,000 is hereby appropriated.

Thus, in the same sentence there is a demand for an examination and its nullification by directing the Mississippi River Commission to perform work which it ought not perform until the examination is made and the report transmitted to Congress. Congress could not act intelligently and with full knowledge of the facts until after this examination is made. You mix the two here—the examination and the appropriation.

Why, Mr. President, if we adopt that class of provisions, we undermine the whole system. The very fundamental idea should be that we undertake no work whatever until careful examination has been made and an estimate furnished, not only that we may know whether or no the improvement is a good one, but that we may know what it will cost; and then, with all this information before it, let Congress decide. This paragraph slips in a provision allowing \$200,000 instead of \$100,000, and allowing the commission to go ahead before the examination is made.

There was a paragraph somewhat similar in the act of 1910, under which a million dollars was appropriated under a great deal of pressure for a so-called waterway from the Lakes to the Gulf. It was vigorously opposed by many of us. We thought it very objectionable; but even that contained the clause which will be found on page 34 of the river and harbor act of 1910. It provided for the presentation of plans, and so forth, and then stated:

And until these plans and estimates have been submitted and a project for the improvement adopted by Congress the appropriation of \$1,000,000 herein made shall not be available for expenditure.

Mr. President, if this paragraph goes in, the Committee on Rivers and Harbors of the other House and the Committee on Commerce of the Senate owe an apology to a multitude of persons who have come before Congress in the last 15 years. When they have come, and they have come often, asking us to make an appropriation and to order with that appropriation an examination, asking in case the report or the examination is favorable, that the improvement may proceed, we have said every time, "No; make your examination, then come to Congress and run the same gantlet that every other project has to run. If that report is favorable, and we approve it, then, and in that case, we will decide whether or not an appropriation should be made."

This may seem a trivial item, Mr. President, but it is an entering wedge for the expenditure of tens of millions of dollars in the upper Mississippi River before we have had time for consideration. It is also a beginning for the destruction of the most salutary and the most necessary feature of our whole system of river and harbor appropriations. I am very glad to know that the Senator from Arizona [Mr. SMITH] withdrew his amendment, which was subject to the same objection to which this paragraph is subject.

In view of that fact, Mr. President, and in view of the precedent which it will create, I can not vote for this bill. There are other objections, but I shall not detain the Senate to discuss them.

The bill was reported to the Senate as amended.

Mr. STONE. Mr. President—

The PRESIDENT pro tempore. The question is on concurring in the amendment made as in Committee of the Whole.

Mr. STONE. Mr. President, I desire to make an inquiry. I had been called out to attend a session of a subcommittee of the Senate before which I had an amendment pending. I returned and found that the Senator from Ohio [Mr. BURTON] was engaged in one of his usual—

Mr. NEWLANDS. Mr. President, is the bill yet in the Senate?

The PRESIDENT pro tempore. The bill has been reported to the Senate. The Chair understood certain Senators to say that they desired to reserve two amendments, the Senator from Mississippi being one of those Senators.

Mr. NELSON. The Senator has not asked to reserve the amendment since the bill was reported to the Senate. There is no reservation asked at present.

The PRESIDENT pro tempore. Very well. Then the question is on concurring in the amendment made as in Committee of the Whole.

Mr. BORAH. Mr. President, I understand that there were two reservations made.

The PRESIDENT pro tempore. There was a suggestion made to the Chair that reservations might be made, but they have not been made.

Mr. POINDEXTER. I understood the Senator from Mississippi gave notice that he would ask for a separate vote—

The PRESIDENT pro tempore. The Senator did give notice, but he has not demanded a separate vote.

Mr. POINDEXTER. I ask for a separate vote upon the Senator's reservation.

The PRESIDENT pro tempore. The Senator from Washington asks a separate vote upon the Connecticut River project, on page 5.

Mr. BRANDEGEE. I demand a separate vote upon the amendment contained on pages 53 and 54, relating to the Municipal Electric Co. of the State of Minnesota.

The PRESIDENT pro tempore. Without objection, the other amendments made, as in Committee of the Whole, will be concurred in. The question is upon concurring in the amendment upon page 5, relating to the Connecticut River project.

Mr. POINDEXTER. I ask for the yeas and nays.

The PRESIDENT pro tempore. The yeas and nays are demanded.

Mr. BANKHEAD. I should like to understand what that amendment is.

The PRESIDENT pro tempore. It is the amendment agreed to, as in Committee of the Whole, in reference to the Connecticut River dam.

Mr. BANKHEAD. Is it the amendment offered by the Senator from Connecticut, on which the vote is about to be taken?

The PRESIDENT pro tempore. It is. The Senator from Washington [Mr. POINDEXTER] demands the yeas and nays. Is there a second?

Mr. CLARKE of Arkansas. I have no objection to the yeas and nays being ordered if a sufficient number of Senators second the demand, but I desire to say—

The PRESIDENT pro tempore. The Chair thinks the demand for the yeas and nays has not yet been seconded. Senators seconding the demand will please raise their hands. [After counting.] There is not a sufficient number seconding the demand, and the yeas and nays are not ordered. The question is on concurring in the amendment reserved on page 5.

Mr. POINDEXTER. Mr. President, I notice the junior Senator from Colorado [Mr. THOMAS] had his hand up, and I do not think the Chair counted him. I should like the question to be again put.

The PRESIDENT pro tempore. The Chair will again put the request. Is the demand for the yeas and nays seconded?

The yeas and nays were ordered.

Mr. CLARKE of Arkansas. Mr. President, I am going to vote to put that amendment on this bill, although I know it ought not to be there. If this were the last word in the passage of this bill, of course I should not do so, because it is perfectly plain that if the amendment is put upon the bill and sent to the President as a part of it, in order to maintain his reputation for consistency he will doubtless veto the entire measure. He did so in a parallel case, when there was a failure to make provision for the support of the Commerce Court. I am too much interested in this bill to want to test out the endurance of the President in the matter of consistency; but bad examples have been set here, and, having been set, they have been followed, as they usually are. Bad examples are always followed, while good examples are rarely ever followed, or, at all events, they are not cited as precedents and do not, upon the mere statement of them, constitute a sufficient reason for doing right the second or third time, but a bad precedent is always an unanswerable argument in favor of doing another bad thing.

I now realize that a great mistake was made in putting all this legislation relating to waterways upon this bill. The fact of the business is that this matter of legislating upon appropriation bills is another manifestation of a curse which rested on this country just after the Civil War in the shape of reconstruction measures. The Democratic membership of the Senate committed themselves to the addition of general legislation on appropriation bills as a means of keeping soldiers away from the polls, under a practice that prevailed at that time. It seemed to justify itself, but, like everything else, the worst things in this world are the abuses of good ones, and so the practice has been kept up.

I have formulated in my own mind a plan which will regulate my own conduct hereafter. I shall only favor the addition of legislation to appropriation bills when the matter relates to something that is practically not contested and the conditions

of the situation justify such action, or where there is a difference of policy, where technical objections may defeat the popular will, or where some fundamental principles of government are at stake—matters of large import, matters of far-reaching importance; but I do not intend to lend my aid to the passage, as part of appropriation bills, of measures that are disputed in character or that relate to new features of legislation which ought to be thrashed out upon their own merits, without the opportunity to hold up, if I may use such a phrase, important issues of another character in which the membership of the Senate is interested, and practically to compel a surrender of your own individual judgment as to the merits of a particular measure in order to accomplish something of greater importance.

It is not a system of legitimate legislation to permit that to be done. It is an abuse of it. I think the common sense, the enlightened sense of the Senate, ought to be adequate to the correction of that practice.

There will be a conference upon this particular bill, when all these water matters will undergo investigation in the light of the objections that have been urged here. The sentiment of the Senate on the question of whether or not the National Government shall have a right to levy tolls upon water-power grants has been, after a full argument, settled. Now the attempt is made to jeopardize the life of this important bill, one in which many sections of this country are interested, and in which my section of the country is vitally interested, in order to compel a reversal of that position.

I confess that I would submit, with a frank statement of the fact that I was submitting, to an imposition put upon me, because of the interest of my people, to permit things to go through which, upon their own merits, I would not vote for in order to secure for them the splendid advantages that will come to them upon the approval of this particular bill. I hope hereafter that such legislation as this may be put upon a higher plane of independence; that appropriation bills will be confined to matters of appropriation; and that matters of legislation of a disputed character will be compelled to work their destinies out through the slow processes of discussion in this tribunal and elsewhere.

Because I know that this matter will go to conference, because I know the views of another branch, and because I know the views of the President, I am perfectly willing to vote to put this amendment on, knowing that it would be fatal to the bill if it went on and was accepted by the other House, and under the belief that the common sense of the situation will finally commend itself to those Senators and Members of the other House who will constitute the conference committee, and that they will make some adjustment of it that will give expression to the known sentiments of each House, and will not permit this important bill to be loaded down to the extent of jeopardizing its very existence.

So that I say I shall vote for something that I am not abstractly in favor of, in order that I may get it in a place where it will receive the consideration that it is not likely to receive here this afternoon. It if results in leaving this particular water-power legislation out of this bill, well and good. That will best conform to my ideas of what should be done, until the outlines of the question have been completely settled so that they will be no longer open to discussion here.

I do not say that it is an unfair advantage to take of the opportunity, because when you are within the rules of a body that has power to exercise you are within your rights, for rules are made to give advantage when that is necessarily evolved from their application. In what I have had to say I do not complain of the action of anybody, but I think this system has gone to a point where abuses have become perfectly apparent.

The PRESIDENT pro tempore. The question is on concurring in the amendment made as in Committee of the Whole, on which the yeas and nays have been ordered.

Mr. SMITH of Georgia. I ask that the amendment be stated.

The PRESIDENT pro tempore. Does the Senator desire that it be read?

Mr. SMITH of Georgia. I am now informed that it is the Connecticut dam proposition.

The PRESIDENT pro tempore. That is the question to be voted on.

Mr. SMITH of Georgia. Then I do not care to have it read.

The PRESIDENT pro tempore. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. CULLOM (when his name was called). I have a general pair with the junior Senator from West Virginia [Mr. CHILTON]. I transfer that pair to the junior Senator from Massachusetts [Mr. CRANE] and will vote. I vote "yea."

Mr. NELSON (when his name was called). I am paired with the senior Senator from Georgia [Mr. BACON] on this matter, and therefore withhold my vote.

Mr. SMITH of Michigan (when his name was called). I again announce my pair with the junior Senator from Missouri [Mr. REED], and withhold my vote.

Mr. WILLIAMS (when his name was called). Transferring my pair with the Senator from Pennsylvania [Mr. PENROSE] to the Senator from Indiana [Mr. SHIPLEY], I desire to vote. I vote "nay."

The roll call was concluded.

Mr. BRADLEY. I transfer my pair with the junior Senator from Indiana [Mr. KERN] to the senior Senator from Nebraska [Mr. BROWN] and will vote. I vote "yea."

Mr. FOSTER (after having voted in the negative). I have a general pair with the Senator from Wyoming [Mr. WARREN], who is absent on public business. I transfer that pair to the junior Senator from Alabama [Mr. JOHNSTON] and will allow my vote to stand.

Mr. CLARK of Wyoming. I desire to announce that my colleague [Mr. WARREN] is unavoidably absent on the business of the Senate.

Mr. CULBERSON (after having voted in the negative). I inquire if the Senator from Delaware [Mr. DU PONT] has voted?

The PRESIDENT pro tempore. The Chair is informed that that Senator has not voted.

Mr. CULBERSON. As I have a general pair with that Senator, I withdraw my vote.

The result was announced—yeas 39, nays 37, as follows:

#### YEAS—39.

|           |              |             |            |
|-----------|--------------|-------------|------------|
| Ashurst   | Clark, Wyo.  | Jackson     | Oliver     |
| Borah     | Clarke, Ark. | Jones       | Owen       |
| Bourne    | Cullom       | Kenyon      | Page       |
| Bradley   | Cummins      | La Follette | Perkins    |
| Brandegee | Curtis       | Lippitt     | Richardson |
| Briggs    | Dillingham   | Lodge       | Root       |
| Burnham   | Gallinger    | McCumber    | Stephenson |
| Burton    | Gamble       | McLean      | Townsend   |
| Catron    | Guggenheim   | Myers       | Wetmore    |
| Clapp     | Hitchcock    | Newlands    |            |

#### NAYS—37.

|             |                |              |          |
|-------------|----------------|--------------|----------|
| Bankhead    | Johnson, Me.   | Poin Dexter  | Thomas   |
| Bristow     | Kavanaugh      | Pomerene     | Thornton |
| Bryan       | Lea            | Sheppard     | Tillman  |
| Chamberlain | Martin, Va.    | Simmons      | Watson   |
| Crawford    | Martine, N. J. | Smith, Ariz. | Webb     |
| Fall        | O'Gorman       | Smith, Ga.   | Williams |
| Fletcher    | Overman        | Smith, Md.   | Works    |
| Foster      | Paynter        | Smith, S. C. |          |
| Gardner     | Percy          | Stone        |          |
| Gronna      | Pittman        | Swanson      |          |

#### NOT VOTING—19.

|         |                |         |              |
|---------|----------------|---------|--------------|
| Bacon   | Culbertson     | Kern    | Smith, Mich. |
| Brady   | Dixon          | Nelson  | Smoot        |
| Brown   | du Pont        | Penrose | Sutherland   |
| Chilton | Gore           | Reed    | Warren       |
| Crane   | Johnston, Ala. | Shively |              |

So the amendment made as in Committee of the Whole was concurred in.

The PRESIDENT pro tempore. The question is now upon the next reserved amendment, which will be stated.

The SECRETARY. The amendment is on pages 53 and 54, relative to power at Minneapolis and St. Paul.

Mr. BRANDEGEE. I do not care for a separate vote upon that.

Mr. BORAH. I do not desire to ask for a ye-and-nay vote, but I want an opportunity to vote on the proposition.

The PRESIDENT pro tempore. The question is upon concurring in the amendment.

The amendment was concurred in.

The PRESIDENT pro tempore. The bill is in the Senate, open to amendment. If no amendment be proposed, the question will be, Shall the amendments be engrossed and the bill read a third time?

Mr. NEWLANDS. Mr. President, I now renew the amendment that I offered a short time ago, providing simply for an investigation, organization, and plans, constituting a river-regulation commission, consisting of the Secretary of War, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce and Labor, two Members of the Senate, and two Members of the House, leaving out the last sentence but one—the sentence which provides that the plans shall involve the expenditure of \$50,000,000 annually. A point of order was made against that amendment by the Senator from North Dakota [Mr. MCCUMBER], and he has indicated his willingness to withdraw his objection if the sentence to which I have referred is left out. I therefore move the adoption of this amendment.

The PRESIDENT pro tempore. The Senator from Nevada offers an amendment, which will be stated.

Mr. NELSON. The amendment has been already read. I do not think it is necessary to read it again.

The PRESIDENT pro tempore. Without objection, the reading of the amendment will be dispensed with.

Mr. GRONNA. I should like to have read the portion which was stricken out.

The PRESIDENT pro tempore. The part stricken out will be stated.

The SECRETARY. The part stricken out is on page 3 of the printed amendment, line 12, and is as follows:

Such plans shall involve the expenditure by the United States of \$50,000,000 annually, commencing on the completion of the Panama Canal and extending over a period of 10 years.

Mr. NEWLANDS. That portion, I will say, is stricken out of the amendment. I now offer it as amended in that way.

Mr. BRANDEGEE. Mr. President, before voting upon the amendment I desire to say that with that part stricken out I shall be glad to support it, and if the system proves a success after its organization I shall be glad to vote for appropriations for it.

The amendment was agreed to, as follows:

SEC. 3. A commission, to be known as the river-regulation commission, consisting of the Secretary of War, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce and Labor, two Members of the Senate, to be selected by the President of the Senate, and two Members of the House of Representatives, to be selected by the Speaker, is hereby created and authorized to bring into coordination and cooperation with the Corps of Engineers of the Army the other scientific or constructive services of the United States that relate to the study, development, and control of waterways and water resources and subjects related thereto, and to the development and regulation of interstate and foreign commerce, with a view to uniting such services through a board or boards in investigating questions relating to the development, improvement, regulation, and control of navigation as a part of interstate and foreign commerce, including therein the related questions of irrigation, forestry, swamp-land reclamation, clarification of streams, regulation of flow, control of floods, utilization of water power, prevention of soil waste, cooperation of railways and waterways, and promotion of transfer facilities and sites, and in forming comprehensive plans for the development of the waterways and water resources of the country for every useful purpose by cooperation between the United States and the several States, municipalities, communities, corporations, and individuals within the jurisdiction, powers, and rights of each, respectively, and with a view to assigning to the United States such portion of such development, promotion, regulation, and control as can be properly undertaken by the United States by virtue of its power to regulate interstate and foreign commerce and by reason of its proprietary interest in the public domain, and to the States, municipalities, communities, corporations, and individuals such portion as properly belongs to their jurisdiction, rights, and interests, and with a view to properly apportioning costs and benefits, and with a view to so uniting the plans and works of the United States within its jurisdiction, and of the States and municipalities, respectively, within their jurisdictions, and of corporations, communities, and individuals within their respective powers and rights, as to secure the highest development and utilization of the waterways and water resources of the United States; and such river-regulation commission is authorized to appoint as members of such board or boards such engineers, transportation experts, experts in water development, and constructors of eminence as it may deem advisable to employ in connection with such plans. And for the expenses of such organization, investigation, and plans the sum of \$500,000 is hereby appropriated.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

#### PHYSICAL VALUATION OF RAILROADS.

Mr. LA FOLLETTE. Mr. President, pursuant to the unanimous-consent agreement, I move that the Senate proceed to the consideration of House bill 22593, to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, by providing for physical valuation of the property of carriers subject thereto and securing information concerning their stocks and bonds and boards of directors.

Several Senators addressed the Chair.

Mr. LA FOLLETTE. I will yield, that some routine business may be transacted.

#### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, transmitted to the Senate resolutions of the House of Representatives on the life and public services of Hon. WELDON BRINTON HEYBURN, late a Senator from the State of Idaho.

The message also transmitted to the Senate resolutions of the House of Representatives on the life and public services of Hon. ROBERT L. TAYLOR, late a Senator from the State of Tennessee.

The message further transmitted to the Senate resolutions of the House of Representatives on the life and public services of Hon. JEFF DAVIS, late a Senator from the State of Arkansas.

The message also transmitted to the Senate resolutions of the House of Representatives on the life and public services of Hon. ROBERT C. WICKLIFFE, late a Representative from the State of Louisiana.

The message further transmitted to the Senate resolutions of the House of Representatives on the life and public services of Hon. CARL C. ANDERSON, late a Representative from the State of Ohio.

The message also transmitted to the Senate resolutions of the House of Representatives on the life and public services of Hon. SYLVESTER CLARK SMITH, late a Representative from the State of California.

The message further transmitted to the Senate resolutions of the House of Representatives on the life and public services of Hon. GEORGE S. LEGARE, late a Representative from the State of South Carolina.

#### ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the President pro tempore:

H. R. 20102. An act relating to proof of signatures and handwriting; and

H. R. 26279. An act granting the Fifth-Third National Bank of Cincinnati, Ohio, the right to use original charter No. 20.

#### AGRICULTURE APPROPRIATION BILL.

Mr. BURNHAM. Mr. President, a notice appears on the calendar that upon the disposition of the Indian appropriation bill I shall call up House bill 28283, the Agriculture appropriation bill. I desire to give notice now that immediately after the disposition of the Post Office appropriation bill I shall ask the Senate to consider the agricultural appropriation bill.

#### ADDITIONAL REPORTS OF COMMITTEES.

Mr. ROOT, from the Committee on the Judiciary, to which was referred the bill (S. 8454) to amend section 914 of the Revised Statutes, reported it without amendment.

Mr. CUMMINS, from the Committee on the Judiciary, to which were referred the following bills, reported them each with amendments, and submitted reports thereon:

S. 7600. A bill legalizing certain conveyances heretofore made by the Central Pacific Railroad Co. and others within the State of Nevada (Rept. No. 1299); and

S. 3194. A bill to revise section 985 of the Revised Statutes of the United States (Rept. No. 1308).

Mr. POINDEXTER, from the Committee on Pacific Islands and Porto Rico, to which was referred the bill (H. R. 20048) declaring that all citizens of Porto Rico and certain natives permanently residing in said island shall be citizens of the United States, reported it without amendment and submitted a report (No. 1300) thereon.

Mr. CATRON, from the Committee on Military Affairs, to which was referred the bill (H. R. 28469) granting two condemned cannon to the Walkill Valley Cemetery Association, of Orange County, N. Y., reported it without amendment and submitted a report (No. 1301) thereon.

He also, from the same committee, to which was referred the bill (H. R. 26078) for the relief of Charles S. Kincaid, reported it with amendments and submitted a report (No. 1302) thereon.

Mr. LEA, from the Committee on Military Affairs, to which were referred the following bills, reported them each with an amendment and submitted reports thereon:

S. 5107. A bill for the relief of W. D. McLean, alias Donald McLean (Rept. No. 1306); and

S. 6675. A bill to grant an honorable discharge to Philip Cook (Rept. No. 1307).

Mr. LEA, from the Committee on Military Affairs, to which was referred the joint resolution (H. J. Res. 118) authorizing the Secretary of War to accept the title to approximately 5,000 acres of land in the vicinity of Tullahoma, in the State of Tennessee, which certain citizens have offered to donate to the United States for the purpose of establishing a maneuver camp and for the maneuvering of troops, establishing and maintaining camps of instruction, for rifle and artillery ranges, and for mobilization and assembling of troops from the group of States composed of Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, North Carolina, and South Carolina, reported it with an amendment and submitted a report (No. 1303) thereon.

He also, from the same committee, to which were referred the following bills, submitted adverse reports thereon, which were agreed to, and the bills were postponed indefinitely:

S. 5200. A bill to authorize the President to appoint A. C. G. Williams-Foote, late first lieutenant in the Philippine Scouts, to the grade of first lieutenant in the United States Army, and place him on the retired list (Rept. No. 1304); and

S. 5201. A bill to authorize the President to appoint Clarence C. Faw, late second lieutenant in the Philippine Scouts, to the grade of second lieutenant in the United States Army, and place him on the retired list (Rept. No. 1305).

## THE VIRGINIA TERMINAL CO.

Mr. PAYNTER. Mr. President, on Saturday there was reported from the Committee on the District of Columbia the bill (S. 7640) to incorporate the Virginia Terminal Co. My information is from a party living on M Street, over which this road will pass, that there have been no hearings at all upon the bill, and it means the construction of a street car line for a mile through this city, and provides that it shall go over the lines of some other street car company here, besides not allowing the property owners or the street car company to be heard, although the street is a narrow one and two tracks are provided for. I am advised that the committee acted upon the recommendation of the Commissioners of the District of Columbia, and they took such action because the committee was pressed for time and did not feel that hearings could be given. I therefore move to recommit the bill to the Committee on the District of Columbia, with a view to having the parties interested heard. By this motion I do not intend any reflection, of course, upon the action of the committee.

The PRESIDENT pro tempore. The bill will be recommitted to the Committee on the District of Columbia.

## ADDITIONAL AMENDMENTS TO APPROPRIATION BILLS.

Mr. McCUMBER submitted an amendment proposing to increase the appropriation for the Glacier National Park, Mont., from \$75,000 to \$250,000, intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. BORAH submitted an amendment providing that hereafter no part of the appropriation for fortifications and armament thereof for the Panama Canal shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of work of any employee of the United States Government, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. KENYON submitted an amendment proposing to strike out from the agricultural appropriation bill the provision providing for the purchase and distribution of valuable seeds, intended to be proposed by him to the agricultural appropriation bill, which was ordered to lie on the table and be printed.

Mr. TOWNSEND submitted an amendment proposing to appropriate \$750 each to pay Charles M. Campbell and Charles A. Davidson, late clerks of the courts of the United States for Indian Territory, for fees earned by them for performing services not required of clerks of United States courts in other districts, etc., intended to be proposed by him to the general deficiency appropriation bill, which was ordered to be printed and, with the accompanying paper, referred to the Committee on Appropriations.

Mr. FALL submitted an amendment proposing to appropriate \$60,800 for the support and education of 400 Indian pupils at the Indian school at Albuquerque, N. Mex., intended to be proposed by him to the Indian appropriation bill, which was ordered to lie on the table and be printed.

He also submitted an amendment providing for pay of one special assistant to the United States Attorney General, district of New Mexico, who shall act as attorney for the Pueblo Indians of New Mexico, etc., intended to be proposed by him to the Indian appropriation bill; which was ordered to lie on the table and be printed.

Mr. CURTIS submitted an amendment proposing to appropriate \$1,200 to pay F. H. Wakefield for preparing the history of legislation for the Senate in the third session of the Sixty-second Congress, etc., intended to be proposed by him to the general deficiency appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. BRANDEGEE submitted an amendment proposing to appropriate \$140,000 for the erection of a public building at Middletown, in the State of Connecticut, intended to be proposed by him to the omnibus public buildings bill, which was ordered to lie on the table and be printed.

Mr. JONES submitted an amendment proposing to increase the appropriation for a post-office building at Seattle, Wash., from \$300,000 to \$1,250,000, intended to be proposed by him to the omnibus public buildings bill, which was ordered to lie on the table and be printed.

Mr. OLIVER submitted an amendment providing that the proceeds of the sale of the post-office site situated at Liberty Avenue and Sixteenth Street, Pittsburgh, Pa., together with the additional sum of \$750,000, not to exceed \$1,500,000 in all, be appropriated for the purchase of another site for a post office in that city, etc., intended to be proposed by him to the omnibus public buildings bill, which was ordered to lie on the table and be printed.

Mr. LODGE submitted an amendment proposing to appropriate \$2,000 for the salary of one assistant in the Bureau of Fisheries, Division of Inquiry respecting food fishes, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

## SPEECH OF MR. JUSTICE HOLMES (S. DOC. NO. 1106).

Mr. LODGE. I have a copy of a speech of Mr. Justice Holmes, delivered at a dinner of the Harvard Law School Association, of New York, on February 15, 1913. I ask that the speech be printed as a Senate document.

The PRESIDENT pro tempore. Without objection, it is so ordered.

## PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. Latta, executive clerk, announced that the President had approved and signed the following acts:

On February 20, 1913:

S. 104. An act for the relief of Carl Krueger; and

S. 8035. An act granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy and of wars other than the Civil War and to certain widows and dependent relatives of such soldiers and sailors.

On February 24, 1913:

S. 2733. An act for the relief of the estate of Almon P. Frederick.

## COMMISSION ON ECONOMY AND EFFICIENCY (S. DOC. NO. 1105).

The PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which was read, and, with the accompanying paper, referred to the Committee on Appropriations and ordered to be printed:

To the Senate:

In response to the resolution of the Senate, dated February 21, 1913, requesting that I send to the Senate any additional information submitted by the Commission on Economy and Efficiency relating to the matter of saving in recovery of Government waste paper, I transmit herewith reports of the commission on the subject dated September 21, 1912, and February 11, 1913.

WM. H. TAFT.

THE WHITE HOUSE, February 24, 1913.

## PHYSICAL VALUATION OF RAILROADS.

The Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 22593) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof by providing for physical valuation of the property of carriers subject thereto and securing information concerning their stocks and bonds and boards of directors, which had been reported from the Committee on Interstate Commerce with amendment.

The Secretary proceeded to read the bill.

The first amendment was, on page 1, line 8, to strike out all down to line 3 on page 4 and to insert:

SEC. 19a. That the commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this act. To enable the commission to make such investigation and report it is authorized to employ such experts and other assistants as may be necessary. The commission may appoint examiners who shall have power to administer oaths, examine witnesses, and take testimony. The commission shall make an inventory which shall list the property of every common carrier subject to the provisions of this act in detail and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment as prescribed by the Interstate Commerce Commission.

First. In such investigation said commission shall ascertain and report in detail as to each piece of property owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences between any such value and each of the foregoing cost values.

Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same, and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value.

Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

Fourth. In ascertaining the original cost to date of the property of such common carrier the commission, in addition to such other elements as it may deem necessary, shall investigate and report upon the history and organization of the present and of any previous corpora-

tion operating such property; upon any increases or decreases of stocks, bonds, or other securities in any reorganization; upon moneys received by any such corporation by reason of any issues of stocks, bonds, or other securities; upon the syndicating, banking, and other financial arrangements under which such issues were made and the expense thereof; and upon the net and gross earnings of such corporations; and shall also ascertain and report in such detail as may be determined by the commission upon the expenditure of all moneys and the purposes for which the same were expended.

Fifth. The commission shall ascertain and report the amount and value of any aid, gift, grant of right of way, or donation made to any such common carrier, or to any previous corporation operating such property, by the Government of the United States or by any State, county, or municipal government, or by individuals, associations, or corporations; and it shall also ascertain and report the grants of land to any such common carrier, or any previous corporation operating such property, by the Government of the United States, or by any State, county, or municipal government, and the amount of money derived from the sale of any portion of such grants and the value of the unsold portion thereof at the time acquired and at the present time; also the amount and value of any concession and allowance made by such common carrier to the Government of the United States or to any State, county, or municipal government in consideration of such aid, gift, grant, or donation.

The PRESIDENT pro tempore. The question is on agreeing to the amendment just read.

Mr. BRISTOW. Does the Senator from Wisconsin desire to make a statement? If so, I wish to make some inquiries after he has made his statement.

Mr. LA FOLLETTE. Mr. President, I do not desire to take the time of the Senate to make any statement upon this bill unless I can save time by so doing. Perhaps we can make better progress with the bill by my answering as best I can any questions which may be asked by Senators. It may be that I might say just this—

Mr. SMITH of Georgia. Will the Senator yield to me?

Mr. LA FOLLETTE. I will.

Mr. SMITH of Georgia. I should like very much to have the Senator, as briefly as he can, explain the necessity for the amendment as a substitute for the original measure. I think it will not only be helpful to us here, but it will be helpful to the friends of the measure who may desire, when they understand the change, without a reference and without a committee of conference, to adopt the change upon the floor of the House.

Mr. LA FOLLETTE. Mr. President, I believe the pending bill to be more important and far-reaching in the benefits which will ultimately flow from it than any measure which Congress has enacted in many years.

Standing here after the long and arduous struggle, I may be pardoned a backward glance along the rugged way which those have come to this final achievement.

The act to regulate interstate commerce which passed in 1887, after a protracted contest of 13 years, declared *unreasonable rates to be unlawful*.

The report made by the Committee on Interstate Commerce when it presented the bill to the Senate 26 years ago stated the evils which the bill was intended to remedy. From that report I quote the following:

That local rates are unreasonably high as compared with through rates.

That both local rates and through rates are unreasonably high at noncompeting points, either from the absence of competition or in consequence of pooling agreements that restrict its operation.

That rates are established without apparent regard to the services performed and are based largely upon what the traffic will bear.

That the stock and bonded indebtedness of the roads largely exceed the actual cost of their construction or their present value, and that unreasonable rates are charged in the effort to pay dividends on watered stock and interest on bonds improperly issued.

The enactment of the law in 1887 was the culmination of a long struggle extending over a period of nearly 14 years. The contest from the beginning was a contest for reasonable rates.

The public was beguiled into the belief that the act of 1887 would insure reasonable rates. While it declared reasonable rates to be the only rates which a railroad company could lawfully charge, it provided no means whatever under which the commission created by the act could, in the public interest, ascertain the value of the property used by the railroads in carrying the commerce of the country. Without such valuation the commission were powerless to ascertain whether a rate was reasonable per se. All that it could do in any case was to compare the rate challenged with some existing rate maintained for a similar service. Hence the best that can be said for the enforcement of the law is that it has tended toward the equalization of rates. But it is clear that there may be a wide difference between reasonable rates and equal rates.

In the general revision of the interstate-commerce act in 1906 Congress refused to provide for the valuation of railway property. In 1910, when the third and last general revision of the interstate-commerce law occurred, the Congress again rejected a provision for the valuation of railway property.

The act to regulate commerce, therefore, stands to-day wholly lacking in any provision for this vitally important requirement.

No intelligent man needs the finding of courts or the recommendation of experts to inform him before purchasing a business of the imperative necessity of ascertaining the fair value of the property used in the business, the cost of operation, and the expense of maintaining the plant or property. But Congress, professing to provide for the enforcement of reasonable transportation rates, willfully disregarded the plain declarations of the Supreme Court and the repeated recommendations of the Interstate Commerce Commission and refused to provide for railway valuation, the only means by which reasonable rates might be ascertained.

As early as 1896 the Supreme Court of the United States had said:

The utmost that any corporation operating a public highway can rightfully demand \* \* \* is such compensation for the use of its property as will be just both to it and to the public. \* \* \*

If the corporation can not maintain such a highway and earn dividends for its stockholders, it is a misfortune for it and them which the Constitution does not require to be remedied by imposing unjust burdens upon the public. (164 U. S., 578.)

And in 1897 the court was even more explicit when it declared that—

If a railroad corporation has bonded its property for an amount that exceeds its fair value, or if its capitalization is largely fictitious, it may not impose upon the public the burden of such increased rates as may be required for the purpose of realizing profits upon such excessive valuation or fictitious capitalization.

We hold, however, that the basis of all calculation as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. \* \* \*

What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth.

Clearly, then, the reasonable rate is a fair return upon the value of the property which the railroad employs for the public convenience, and the valuation of railway property is imperatively required in the public interest.

In 1903 the Interstate Commerce Commission recommended legislation to enable it to secure a valuation of railroad property. It said:

Among the subjects which deserve the attention of Congress is the need of a trustworthy valuation of railway property.

After devoting several pages to a presentation of the reasons which make it imperative to secure this information, and the necessity of additional legislation to that end, the commission says further:

A large number of questions incident to the valuation of railroad properties suggest themselves in addition to those which have been mentioned. This report can not, however, enter into further detail. Sufficient has been said to indicate the importance of an authoritative determination of railway values. It is respectfully recommended that Congress take this matter under advisement with a view to such legislative action as may be deemed appropriate.

The commission says further:

To determine what are just and reasonable rates for public carriage is a Government function of the highest utility. This is the central idea of regulation and the special field of its usefulness.

Regarding the importance of ascertaining the value of railway property for the determination of reasonable rates, the commission says further in the same report:

No tribunal upon which the duty may be imposed, whether legislative, administrative, or judicial, can pass a satisfactory judgment upon the reasonableness of railway rates without taking into account the value of railway property.

In its report in 1907 the commission said:

Reference has been made in these reports to the importance of a physical valuation of railway properties. The considerations submitted in favor of such valuation need not be repeated at this time. It may, however, be proper to call attention to the fact that the introduction into operating expenses of a set of depreciation accounts brings prominently into view an added necessity for an inventory of railway property.

The chief purpose of the depreciation of accounts is to protect the investor against the depletion of his property by an understatement of the cost of maintenance and to protect the public against the maintenance of unduly high rates by charging improvements to cost of transportation. These accounts, which serve so important a purpose, require for their proper and safe administration complete and accurate information relative to the value of the property to which they apply, and this information can only be secured by a formal appraisal embracing all classes of railway property.

In 1908 the commission said:

The commission has, in previous reports, expressed the opinion that it would be wise for Congress to make provision for a physical valuation of railway property, and desires to reaffirm in this report its confidence in the wisdom of such a measure. The change which has gradually taken place in the past few years, as well as the increased responsibilities imposed upon the commission by the amended act to regulate commerce, makes continually clearer the importance of an authoritative valuation of railway property made in a uniform manner for all carriers in all parts of the country.

There is a growing tendency on the part of carriers to meet attacks upon their rates by making proof, through their own experts and officials, of the value of or the cost of reproducing their physical proper-

ties. In what is known as the Spokane case, which is now under advisement by the commission and which involves the reasonableness of the general schedules of Spokane rates on the Great Northern and Northern Pacific, the defendants, apparently at the expense of much time and labor, compiled elaborate and detailed valuations and offered them in evidence before the commission in the defense of the rates of which complaint has been made. It is obviously impossible for shippers who are the complainants in such cases to meet and rebut such testimony, or even intelligently to cross-examine the railroad witnesses by whom such proof is made. In addition to the large expense of retaining experts competent to make such investigations, neither the shippers nor their experts and agents under existing statutes have any right of access to the property of carriers. The carriers, on the other hand, being in possession of the information or having access to the records and to the property from which the information may be compiled and gathered, can use it or not in any given case, as their interests may require. These considerations suggest the need of an official valuation of interstate carriers by the commission, or under other governmental authority, which may be available in rate contests not only to the shippers who make the complaints and to the carriers who must defend their rates, but also to the commission, by which such issues must be decided.

In its report for 1909 the commission again returns to the subject of valuation, which for years it has been endeavoring to force upon the attention of the committees of Congress having control of this subject of legislation. It says:

There is, in our opinion, urgent need of the physical valuation of the interstate railways of this country. In the so-called Spokane case the engineers of the Northern Pacific and Great Northern Railways estimated the cost of reproducing those properties in the spring of 1907. In the trial of pending suits brought by the above companies to enjoin certain rates upon lumber, which the commission had established from the Pacific coast to certain destinations, these same engineers have again estimated the cost of reproduction in 1909. The estimates of the latter year exceed the estimates of 1907 by over 25 per cent.

There is no way by which the Government can properly meet this testimony. Even assuming that the valuation of our railways would be of no assistance to this commission in establishing reasonable rates, it is still necessary, if those rates are to be successfully defended when attacked by the carriers, that some means be furnished by which, within reasonable limits, a value can be established which shall be binding upon the courts and the commission.

In 1911 the commission repeated its recommendations made in 1910, concluding its statement with the following:

The experiences of the commission during the past year in its efforts to enforce and administer the law, serve only to confirm the views expressed in our last, as well as in previous reports, in support of our recommendations for the valuation of railway property. This recommendation we respectfully renew.

In 1912 the commission again renewed its recommendation for physical valuation.

After all these years it is now proposed to authorize and direct the Interstate Commerce Commission to ascertain and report to Congress the value of the several classes of property of carriers engaged in interstate commerce.

Mr. President, the amendments proposed to the House bill simply make its purpose more definite and certain.

I think I may say, Mr. President, that the phraseology of the measure which passed the House is identical with the bill introduced by me seven years ago in the Senate of the United States, with the exception of two paragraphs which relate principally to the financial history of the railroads. That matter contained on pages 2 and 3 of the bill, being the portion stricken out, was added when the bill was introduced in the House. The bill which I offered in the Senate seven years ago was in the best form in which I could draft it at that time. We were just then starting in upon the work in my home State. Scarcely anything had been done in other States in the way of valuation of railroad property for rate-making purposes. But during the years that have intervened we have been gaining knowledge and experience, and the courts and the State commissions and the Interstate Commerce Commission have had forced upon their consideration the subject of railway valuation presented in a more or less crude and unscientific way.

I might say, in passing, that in this seven-year interval I have reintroduced the bill at the beginning of each Congress in the same form in which I first introduced it, my purpose being to keep the subject alive. I have tried to secure action upon it by the Senate Committee on Interstate Commerce and have missed no opportunity to force its consideration by the Senate whenever any measure was pending to which it would be germane as an amendment. Twice in that period I succeeded in getting a record vote upon the question. I have felt the educational value of keeping this important subject to the fore, but until the present session I have never addressed myself to the framing of a soundly economic measure, adjusted to meet the recent decisions and the progress made in the valuation of railroads by the different State commissions of the country.

When the bill came over from the House, with the other members of the subcommittee I undertook the recasting of the measure to report to the Senate Committee on Interstate Commerce.

As a result, the amendments which appear in the Senate print have been worked out. We have called to our assistance—and later they appeared before the full committee—men who have

had much to do in a practical way with the valuation of the railroads in a number of the States, and these men have given us the benefit of their experience, their training, and their knowledge.

The work of valuing the railroads of this country must be done in the first instance by experts, and, necessarily, those experts will be guided in their labors by the specific directions given them in the text of the statute. As the value of their work will depend wholly upon its accuracy, it is vital that the terminology of this statute shall be economically exact.

In the five numbered paragraphs of section 19a as reported by the committee we have employed the precise terms necessary to secure the value of every element of the property owned or used by the common carrier for its purposes as a common carrier, which it is contended should be included in ascertaining the value of the property.

This bill does not prescribe the values that shall ultimately be assembled by the Interstate Commerce Commission in ascertaining the fair value as a basis for rate making, but it does direct the Interstate Commerce Commission to ascertain every element of value which, under the decisions of the courts—the courts are still in a transition period—is now being considered as properly included in ascertaining the fair value of the railroad property as a whole in fixing reasonable rates.

Mr. President, the committee recommends striking out the first five paragraphs of the House bill, which in some respects are indefinite and uncertain and deal with some matters not properly within the scope of a bill designed to provide for a valuation of the several classes of property of carriers subject to the act to regulate commerce. In lieu thereof the committee proposes certain amendments which it believes essential to enable the commission to secure every element of the value of the property of the common carrier so classified and analyzed as to enable the commission and the courts to determine the fair value of such property for rate-making purposes.

The courts from the first have used various terms descriptive of the values and elements of value to be determined as a basis for ascertaining the fair value of railway property. Some of these terms they have altogether rejected. Others have come to have an accepted meaning by commissions and courts and are recognized as covering all the elements of value attaching to the property of common carriers for rate-making purposes. When these values are once ascertained, each aids in correcting the other, and is given such weight as it is entitled to in enabling the commission and the court to arrive at the fair value of the property of the carrier used for its purposes as a common carrier. These terms accepted by recognized authority are: (1) The original cost to date; (2) cost of reproduction new; (3) cost of reproduction less depreciation; (4) other values and elements of value, that is, intangible values.

As amended by the Senate committee, the bill provides in the first subdivision of section 19-a for ascertaining these values.

(1) THE ORIGINAL COST TO DATE.

Existing railroads have actually been built up through a series of years. The construction has been piecemeal and has advanced with the growth of the business. The original cost to date will, at every stage of construction, take account of the prices paid at the time for property, material, and labor, the amount of money paid out for legal services, engineers, architects, designers, management in organizing the corporation, and constructing the road.

I digress just a moment to say, Mr. President, that in ascertaining the value of one of the public utilities of Wisconsin our commission carried its work over a period of 40 years. It found one case where there was manifestly a job perpetrated upon the public, where one contractor was allowed \$3 a day for labor employed, when the going price of labor ascertained by the commission as prevailing at that time was \$1.50 per day. They did not allow the \$3, which was an imposition upon the public, but permitted only the actual value of the labor at that time to be charged up as a part of the capitalization of the road. That is what the tracing out of the original cost to date will mean on every one of these properties.

I can understand how the question will at once be raised in the minds of Senators as to the difficulty, particularly with respect to many of these older roads, of ascertaining these facts; and you will find the opinion expressed by theorists upon the subject that to do so is impossible. But we have had in Wisconsin—they have had in the State of Washington and in other States—an experience that contradicts these theories. It is possible to ascertain this original cost.

In the case of the gas plant in the city of Milwaukee, although the books did not furnish the figures, the cost of all the materials entering into the construction of that plant was determined as of the time. It simply requires industry and

thoroughness on the part of the commission charged with the responsibility. And in no other way can the public ever be informed of the exact amount actually invested by the carrier, excepting by establishing the original cost to date.

The original cost to date will also show the exact amount received from the sale of stocks and bonds and, if the bonds have been sold at a discount, the price realized and all the expenses of brokerage. It will show the amount paid in by stockholders. If stocks or bonds have been issued for property instead of cash, the value of the acquired property will be ascertained. If the present corporation has acquired the property or any portion thereof at less than its physical value, or through some form of manipulation or combination or deception to the public, with a view of strengthening its monopoly character and increasing its prospect for excessive value, or if its expenditures do not represent reasonable expenditures which ordinary business management would not have approved, all of these facts will be disclosed by ascertaining the original cost to date, and the matter will be dealt with by the court when it comes to pass upon that question. The Supreme Court has already in one notable case, the Stanislaus case, rejected excessive costs and manifestly extravagant expenditures made by the corporation, and denied their right to capitalize those extravagant and corrupt expenditures against the public. It will be for the commission and the courts to determine to what extent, if at all, such investments will be allowed to be capitalized as against the public for rate-making purposes. In short, the original cost to date will show the true investment.

As to the importance of obtaining the original cost to date, Mr. Henry L. Gray, engineer of the public service commission of the State of Washington, says:

This work (the ascertainment of the original cost to date) was of the maximum value, as it acquainted the engineers not only with the cost of the lines as a whole but also with the cost of many isolated structures, such as bridges, buildings, etc. It also informed them as to the overhead cost, such as engineering, legal and general expenses, and other kindred items. With this knowledge it was a comparatively easy matter to reduce the cost of the different classes of property to a unit basis, such as the cost of bridges per linear foot, the cost of buildings per square foot of floor area. Being in possession of the detailed cost of all the modern structures, a most desirable guide was available in fixing the cost of reproduction. Without the knowledge of these costs as obtained, it would have been utterly impossible to intelligently dispute the estimates later prepared by the railroads.

Clyde B. Aitchison, chairman of the Oregon commission, says:

Any rule based on reproduction value less depreciation which ignores the item of original cost, additions, and betterments is not only economically and legally unsound but is fraught with possibilities of greatest danger to the country.

Commissioner Maltbie, of the New York Public Service Commission, says:

I think altogether too much attention has been given to cost of reproduction and too little to investment—original cost to date. Where we can obtain the actual facts regarding the cost of the existing plant, we put much more emphasis upon these figures than upon estimates of engineers.

Prof. John R. Commons, of the University of Wisconsin, and at the present time a member of the Wisconsin Industrial Commission, speaking before the committee of the importance of ascertaining these three items of cost—(1) original cost to date, (2) cost of reproduction new, and (3) cost of reproduction less depreciation—says:

The court or commission must necessarily have these three items. It must have this engineering cost of reproduction; it must have the cost of the property less depreciation; and it must have its historical cost—original cost to date—in order to get a true, fair, or reasonable value. It may be that none of these three is reasonable, and it must check and compare in order to see where it is coming out. It could not properly make a mere arithmetical compromise or average between them, but it should work it out on principle. \* \* \* In the original cost everything that is involved in the question of cost to the present owner is included and can not be avoided. It is included, however, under this condition, which the court carries through all of its reasoning on these questions, that that price or cost must have been reasonable. But if there has been fraud or misrepresentation or monopoly, unwarranted and unjust and unfair to the public, that must also be considered. If, on the other hand, the company has been in severe straits, has not been earning dividends, and therefore the purchase was a sacrifice sale or price or cost, that must be given due weight. In the treatment of those questions which have been more or less touched upon by the courts, the idea is to find what, under normal and reasonable condition, would have been paid at that time. And I think that is the reason for using the term "original cost" instead of "actual cost," for the real thing that is meant to be determined is the actual cost at the time of acquisition. But actual cost may be very different from reasonable cost. It may have to be an estimated cost if the books are lacking; that is, the probable cost at that time. Consequently, the term "original," I think, has come to be pretty well recognized by commissions, by engineers and accountants, as well as those cases which come up to the courts as a basis upon which to ascertain the actual cost. The term "original" is equivalent to "actual" as against the speculative or hypothetical.

Prof. Edward W. Bemis, late of the Chicago University and public-utility expert, who has had the widest practical experi-

ence in valuing public utilities, regarding the importance of obtaining the original cost to date, said:

That—the original cost to date—is recognized in the courts as one element to be considered. The Wisconsin commission recognizes it as important in its investigation of railroads as well as municipal utilities. The gas and electric light commission has recognized it in Massachusetts since its creation, and courts are recognizing it everywhere.

So much for the original cost to date.

#### (2) COST OF REPRODUCTION NEW.

This will show the exact cost of reconstructing the property in all its parts at existing prices.

There is a contention to-day by the owners of public utilities and by those representing all common carriers that "cost of reproduction new" is the true basis for the fixing of rates. I myself do not agree with that view. While this cost was once accepted—and the Supreme Court is still frequently quoted as in favor of cost of reproduction new as an element which must be considered in the fixing of rates—with every decision that comes from State courts or from the Supreme Court of the United States it becomes more and more a diminishing element in ascertaining the fair value which is to be used for rate-making purposes. But since there is still a contention that it is an element to be considered, and since there is recognition of it in the decisions of the Supreme Court, not yet eliminated, it is included in this bill.

Mr. POINDEXTER. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Wisconsin yield to the Senator from Washington?

Mr. LA FOLLETTE. I yield.

Mr. POINDEXTER. Does the bill provide for a separate ascertainment of the present value and the original value?

Mr. LA FOLLETTE. It provides for separate ascertainment—

Mr. POINDEXTER. Or rather a separate statement.

Mr. LA FOLLETTE. "Present value" is not a safe term to use without extended definition and qualification. The danger of employing it without limiting its application lies in its current use by engineers to mean the earning power of a public utility. And the earning power of a public utility is based upon existing rates. Values based upon existing rates aim to justify existing rates. Hence the very purpose of determining the present value would preclude any reduction in rates and lead to reasoning in a circle. The bill provides for separate ascertainment of original cost to date, the cost of reproduction new, and the cost of reproduction less depreciation. We simply get all these elements of value and label each one of them.

Mr. FLETCHER. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Wisconsin yield to the Senator from Florida?

Mr. LA FOLLETTE. I do.

Mr. FLETCHER. I inquire of the Senator if he thinks the bill sufficiently provides for a hearing before the final determination for all parties who are interested?

Mr. LA FOLLETTE. I will come to that later. Let me say to the Senator from Florida that I want to take up consecutively each one of the paragraphs of the bill.

Mr. SMITH of Georgia. That question arises out of an amendment contained later on in the bill.

Mr. LA FOLLETTE. Yes; and I will come to it in a very few moments.

As stated, Mr. President, the cost of reproduction new will show the exact cost of reconstructing the property in all its parts at existing prices. While this may be regarded as a classification of diminishing value, it is contended that it is entitled to consideration in ascertaining the value of the physical properties of the carrier, and that contention is recognized by some commissions and some courts. It is therefore included as a separate classification in the bill.

#### (3) THE COST OF REPRODUCTION LESS DEPRECIATION.

This will show the exact cost of reproduction in existing condition. This cost is arrived at by taking the amount of depreciation which has occurred in every part of the property since it was laid down or employed in the public service. This is an element of value so generally considered essential by commissions and courts that the wisdom of establishing it will not be questioned. That is, the commission will determine the cost of the railroad as it is to-day. Certain portions of the property are new and have just been put in; others are well worn. All those elements will be carefully scanned and their value taken account of, so that when this item of value is returned we will know what that property is worth as it stands to-day.

Mr. JOHNSTON of Alabama. Mr. President, will the Senator allow me to ask him if the right of way is to be included in that ascertainment?

Mr. LA FOLLETTE. That is taken care of in this bill separately from other matters. I will come to it a little later.

(4) OTHER VALUES AND OTHER ELEMENTS OF VALUE—THAT IS, INTANGIBLE VALUES.

There is contention as to what intangible or whether, in fact, any intangible values should be included by a commission or rate-making body in assembling the values to be made the basis of the fair value upon which rates shall be fixed. The claim is made in behalf of public utilities that going value, good will, and franchise value should all be ascertained and capitalized. Going value is the cost of developing the business organization of a common carrier after the physical property has been completed. After you have constructed the road, put on the rolling stock, and are ready to begin operating, an expenditure of money is required in establishing the business before the common carrier begins to pay reasonably fair returns on the capital invested. The amount so expended measures the going value. If there is an intangible value that can be rightfully incorporated in the values to be considered in the making of fair rates, it is this one of going value. It is ascertainable. Where they have kept their books honestly and fairly the books will show the exact expenditures.

When you come to the next intangible value, good will, my own opinion is that it is an intangible element which should not be included or considered by the commission in determining the fair value of a common carrier as a basis for rate making. Good will is an expenditure made to take business away from a competitor. Good will implies the existence of competitors furnishing the same product and selling it in the same market. The customers of a common carrier have no freedom of choice, because the common carrier is a natural monopoly and the public has no option of dealing with it in case they are dissatisfied. They are bound to use the common carrier even though it earns their ill will instead of their good will.

Mr. OVERMAN. May I ask the Senator a question?

The PRESIDENT pro tempore. Does the Senator from Wisconsin yield to the Senator from North Carolina?

Mr. LA FOLLETTE. Certainly.

Mr. OVERMAN. A railroad company may place a mortgage of a million dollars on its property, and then a second mortgage. The books will show that first mortgage and that the company received a million dollars; they will also show the second mortgage and the receipt of another million—when we all know that these millions did not go into building that road. How will that be ascertained? The books show that they have spent the money.

Mr. LA FOLLETTE. We have provided in this bill for a most accurate, complete, and careful return of every dollar received and expended by the common carrier engaged in interstate commerce.

Mr. OVERMAN. They will ascertain, then, where that money went?

Mr. LA FOLLETTE. They will not only ascertain what became of the money received upon mortgages, but we have provided in this bill for a strictly accurate accounting of all moneys received by the common carrier from whatever source, and a like accounting for all moneys expended by the corporation for whatever purposes.

Mr. BRISTOW. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Wisconsin yield to the Senator from Kansas?

Mr. BRISTOW. If the Senator prefers to go on and finish, I will not interrupt him. I have a question which I should like to ask him now, or I can wait, as will best suit his convenience.

Mr. LA FOLLETTE. Just as the Senator likes.

Mr. BRISTOW. In speaking of the cost of reproduction new as an element of value and of the value as a going concern, the cost of reproduction new would include the value as a going concern, would it not?

Mr. LA FOLLETTE. Not at all. The cost of reproduction new is the cost of reproducing the property entire at present prices. The value of the property as a going concern is that additional expenditure required in developing the business after the physical property has been completely assembled.

Mr. BRISTOW. But the cost of reproduction new must include the interest on the money that has been used during the period of construction. Now, to illustrate—

Mr. LA FOLLETTE. In ascertaining the cost of reproduction new there is no actual construction. It is a theoretical value determined from the estimate of engineers, based on reproducing the property at present prices of labor and material. That is all it is. It does not take into account anything else. Of course, in getting the value of the actual construction of a road the interest on any capital lying idle under reasonably good business management would have to be taken into account as a

proper expenditure, but this element of value does not appear in getting the "cost of reproduction new." It is an item of value which would be taken account of in determining the "original cost to date."

Mr. BRISTOW. My understanding has been—the Senator has a great deal more information on this subject than I have—that when a railroad in a suit has undertaken to show the present value, or the cost of reproduction, it has always added an item of capital used pending the period of construction; and in a case in which the Northern Pacific Railway Co. was concerned—

Mr. LA FOLLETTE. Proving the value of a property by the methods described by the Senator from Kansas would be the blending of "reproduction new" and "original cost to date," the common carrier availing itself of such elements in the two as would contribute to show the highest possible values of the property as a whole. In this bill we have provided for completely separating these two values.

Mr. BRISTOW. That is the very point.

Mr. LA FOLLETTE. That is, the method suggested by the Senator combines "original cost to date" with "reproduction new." I could see how that would be a very attractive proposition to a railroad corporation. We are now in an era of high prices. In 1897 we were in an era of low prices. Much of the property of existing roads, much of the materials that entered into their construction, were bought at that time. If all the material that was bought at low prices can be charged up at existing high prices, and then, in addition, the capital which an examination of their books shows was lying idle at the time of actual construction, they might so combine the elements of those two classes of valuation greatly to their advantage. But they will not be permitted to do that under this bill. The several valuations will be analyzed; they will be classified; a cleavage will run through between those two elements of cost, and they will not be permitted to include in "reproduction new" any of these items that will appear in "original cost to date."

Mr. BRISTOW. If the Senator will just permit me a suggestion, if the railroad should be permitted to submit the original cost to date as the original cost, and then should take in another element, the cost of reproduction, and then another element, that of good will, and merge those three elements of cost into one, the Senator can readily see that there would be a great deal of duplication of cost in the ultimate result.

Mr. LA FOLLETTE. Mr. President, the fact that these different items of cost are to be obtained by the commission does not mean that they are to be added together, as Prof. Commons says in the matter from which I have just read, nor does it mean that they are all to be added together and averaged, but it means that they are all to be secured for the enlightenment of the commission and the courts. This bill does not undertake to direct the commission as to what relative weight should be given the several valuations they are authorized to make. I do not believe that Congress is prepared to solve that problem. I doubt if any body of men in this country is at this moment prepared to finally settle all of the complex questions involved. And therefore I think it would be a mistake to attempt to set the boundaries and fix the limitations absolutely by statute at this time. As I have said, the decisions of the courts are undergoing modification. There was a time when they declared that stocks and bonds should be taken into account. That position has been abandoned and is no longer contended for even by the carriers.

I have no doubt, I will say to the Senator from Kansas, that elements are being weighed to-day by the courts which ultimately will be eliminated, when the principles are finally settled and determined, upon which the rates of the common carriers of this country will be based.

Mr. BRISTOW. One more question, if the Senator will permit me, in regard to the first section of the bill. Of course I am in thorough accord with the views expressed by the Senator. What I want is to have the values ascertained in the details, so that we can tell what costs should be taken into consideration in fixing the value.

To illustrate, the Baltimore & Ohio Railroad, from Cincinnati to St. Louis, was formerly known as the Ohio & Mississippi. It has been reconstructed in recent years, since it became a part of the Baltimore & Ohio, the tracks have been rebuilt, and a large section of the original road has been abandoned. It is no longer used; the rails have been taken up. From my point of view the cost of the construction of that original road, which has been abandoned, should be no more taken into account in the fixing of the value of that railroad than the cost of an engine that has been abandoned. It is a part of dead property. I want the valuation to be so taken that it will not be, as far as Congress is concerned, an expression of opinion or view in any way that the cost of that track, from the beginning down to the

present time, should be taken into consideration in fixing its value.

Mr. LA FOLLETTE. I will say to my friend from Kansas that every item of expenditure will appear in "original cost to date," and I think it is proper that it should, because it is right for the public to know just how much money has been invested in the property of the common carrier; and it is further right that it should be known just how much of that has been invested by the common carrier itself and how much by the public. The "original cost to date," together with the financial history of all the transactions of the common carrier provided for later in the bill, will give to the public that information.

But to conclude as to these intangible values. The elements of value which will finally constitute fair value for rate-making purposes are steadily narrowing. They are not expanding. No decision by commission or court will stand which is ultimately found to be unfair to the public or to the common carrier.

The third subdivision of section 19-a requires the commission to ascertain and report separately the property held by railroads for purposes other than those of a common carrier. This subdivision and likewise the fifth, which relates to grants and donations and aids and all that, will furnish information that in some aspects will be useful to the commission and to which from every point of view the public is rightfully entitled.

Now I come to the paragraph to which the Senator from Alabama directed my attention.

The fourth subdivision of section 19-a relates to the financial history of the common carrier, and covers all transactions material to the ultimate purpose for which this bill is enacted. It reads as follows:

Fourth. In ascertaining the original cost to date of the property of such common carrier the commission, in addition to such other elements as it may deem necessary, shall investigate and report upon the history and organization of the present and of any previous corporation operating such property; upon any increases or decreases of stocks, bonds, or other securities, in any reorganization; upon moneys received by any such corporation by reason of any issues of stocks, bonds, or other securities; upon the syndicating, banking, and other financial arrangements under which such issues were made and the expense thereof; and upon the net and gross earnings of such corporations; and shall also ascertain and report in such detail as may be determined by the commission upon the expenditure of all moneys and the purposes for which the same were expended.

The terms of this fourth subdivision are plain and do not require to be defined. When the commission has complied with its requirements and reported to Congress, we shall be advised of all the financial operations of every common carrier. Whenever there has been a juggling of the stock and bond operations of a common carrier, with a rake-off to insiders, all of the facts will be laid bare. An important element of this provision is that requiring the commission to report upon the expenditures of all moneys received by the carrier and the purposes for which the same were expended.

The president of the Pennsylvania Co. testified in the Advance Rate cases decided in 1911 that since 1887, when the interstate-commerce act went into effect, his company had expended on the Pennsylvania Railroad lines east of Pittsburgh \$262,000,000 from earnings. During all of this time this company has collected in rates from the public enough to maintain its property, meet operating expenses, pay handsome dividends on all its stock, and besides has exacted enough more from the public to accumulate an enormous surplus. Out of that surplus the Pennsylvania Co. has expended a sum equal to nearly two-thirds of the total cost of the construction of the 2,123 miles owned by the company. That surplus, I believe, is wrongfully taken from the public, and I believe that ultimately common carriers will not be allowed to capitalize it against the public.

In discussion of the subject on another occasion before the Senate I presented a table showing that 31 railroads had within a period of five years paid for permanent construction out of surplus profits exacted from the public amounting to more than \$350,000,000. Thus out of surplus they make extensive improvements and investments for which they should contribute new capital. Then they capitalize these investments and improvements, wrongfully accumulated out of the profits on excessive rates, and in turn make this the basis for charging still higher rates. It is high time that this whole subject should be carefully investigated. The public has a right to know exactly how much has been invested in railroad property, and it likewise has a right to know how much of this investment was contributed by the owners of the roads and how much by the public.

The railroad corporations engaged in interstate commerce have not been and are not now regulated as to reasonable rates, for you can not ascertain what a reasonable rate is until you know the value of the property employed in the business; and after 26 years we are now about to ascertain the value of that property and establish a standard for fixing reasonable rates,

if we pass this bill. But during all the time that has intervened for 26 years the carriers have gone on exacting from the public what they chose, taking enough to pay operating expenses and to meet maintenance. That was proper. In addition they have taken enough to pay interest and dividends—and that was right, provided they were not paying interest and dividends on fictitious capitalization.

And then, besides that, they have taken from the public hundreds upon hundreds of millions and put it into surplus, using that surplus to construct new lines, to build great and expensive and palatial terminals all over this country. Then they have capitalized those new lines and those terminals, assessing the public for the money which the public has put into the business.

Mr. President, I do not believe that is going to be permitted in the end. We are just approaching this big question. This bill does not attempt to settle the issue involved in the capitalization of surplus expended in permanent improvements and in construction.

The amendments in the succeeding paragraphs of the bill relate to procedure and are designed to make the original purposes of those paragraphs more definite and certain of administration. Under the terms of the House bill whenever the commission completes the valuation of the property of any common carrier it is required to give notice and grant a hearing thereon to such carrier, with a view of making any necessary corrections before such valuation becomes final. The Senate committee amendment designates such completed valuation as "tentative" for the time being, and provides that notice shall be given not only to the common carrier but also to the Attorney General of the United States, the governor of any State in which the property so valued is located, and to such additional parties as the commission may prescribe.

That will give the commission an opportunity to send notice of valuation to boards of trade and shippers' associations in the territory covered by the valuation, so everyone who is interested can appear and be heard. The Attorney General would represent in a broad way all the public, and any governor can direct the attorney general of any State through which the lines run to protest against or be heard in favor of the valuation.

If no protest is filed, the valuation becomes final—that is, final to the extent that it is prima facie evidence whenever a rate case arises. Upon protest being made, the commission, after hearing all the testimony, may correct the tentative value if found to be erroneous in the light of all the evidence presented. Then that becomes the final value and prima facie evidence of the fair value of the property of the common carrier in issue.

After the final value shall have been thus established, in any proceeding to fix rates under the interstate-commerce act this final value may be assailed before the commission by the carrier or by any interested party for the public or any association of shippers.

In the event that an appeal is taken from the order of the commission fixing rates and such appeal involves the final value of the property of the carrier as fixed by the commission and upon the trial evidence shall be introduced regarding such value, which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, shall transmit a copy of such evidence to the commission and shall stay further proceedings in said action for such time as the court shall determine from the date of such transmission. Upon the receipt of such evidence the commission shall consider the same and may fix a final value different from the one fixed in the first instance, and may alter, amend, or rescind any order which it has made involving said final value, and shall report its action thereon to said court within the time fixed by the court. If the commission shall alter, modify, or amend its order, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order. The purpose of this provision is—

Mr. CRAWFORD. To prevent delay.

Mr. LA FOLLETTE. Yes; solely to prevent delay.

Mr. SMITH of Georgia. That is an order as to final value.

Mr. LA FOLLETTE. The order referred to is the order which the commission entered in the proceedings to fix rates. It is assumed that the rates would be related to the value of the property of the carrier. If the carrier or any party interested for the public on the hearing of the appeal before the court, offers new and material evidence as to the value of the prop-

erty, evidence which might, for example, cause the rates fixed by the commission to be held by the court to make the rates fixed in the order of the commission confiscatory, or, on the other hand, so high as to be unjust to the public, the commission should have the opportunity to consider this new evidence as to the value of the property and modify its order if, in the judgment of the commission, it ought to be modified. And this provision of the bill is for the purpose of preventing the delay incident to having the case tried out—even to the court of last resort, it might be—on evidence as to the value of the property different from that heard by the commission when it passed upon the proceedings in the first instance.

Mr. President, out of 32 cases tried by the commission which were appealed to the Supreme Court up to 1906—when I went over the records very carefully at the time the Hepburn bill was pending here—26 of the 32 cases were reversed, because the railway companies withheld important testimony upon the hearing before the commission, offering it instead when the case was heard on appeal before the court.

Mr. SMITH of Georgia. I will ask the Senator if he does contemplate in some other provision or some other statute a direction that if the commission modifies the estimate of final value it shall also have the opportunity to pass upon the question as to whether it is necessary to modify the directions with reference to rates.

Mr. LA FOLLETTE. This very amendment covers that specifically and exactly. I will say to the Senator from Georgia that the order which is modified, provided they find the testimony material, is the order which fixes the rate. You see, they make no finding with regard to valuation in that hearing. It is the rate case that they are trying, and the order of the commission has to do with rates, and there is no separate finding on the value. But the value is weighed in determining the rate. If the court receives new testimony as to value, it is required to transmit this new evidence to the commission, and—

Upon the receipt of such evidence the commission shall consider the same and may fix a final value different from the one fixed in the first instance, and may alter, modify, amend, or rescind any order which it has made involving said final value.

That is, the order which it has made in the rate case involving the value.

Mr. CRAWFORD. It is really a rate-making order.

Mr. LA FOLLETTE. It is a rate-making order—

And shall report its action thereon to said court within the time fixed by the court.

Mr. SMITH of South Carolina. I should like to ask if the general object of the bill in fixing the physical valuation of railroads in this country has not for its ultimate purpose the equitable adjustment of rates in every case.

Mr. LA FOLLETTE. Certainly.

Mr. SMITH of South Carolina. I was misled by the question of the Senator from Georgia.

Mr. LA FOLLETTE. It has to do with the value as affecting the rates. That is the purpose of this amendment.

Mr. SMITH of Georgia. I understand, of course, that that is true, but what was troubling me is the language on page 11, which seemed to limit the modified order by the commission to a modification of their estimate of final value. I was afraid the language might be construed to limit their action to the estimate of the final value and not extend to a modification of their order with reference to the rate.

Mr. LA FOLLETTE. The word "order" is used throughout that amendment as applying solely to the rate. The words "final value" are used as applying to the value of the railroad property.

Mr. SMITH of Georgia. If the Senator will allow me to read three or four lines—

Mr. LA FOLLETTE. Certainly.

Mr. SMITH of Georgia (reading)—

Upon the receipt of such evidence the commission shall consider the same—

That is, new evidence as to value—

and may fix a final value different from the one fixed in the first instance, and may alter, modify, amend, or rescind any order which it has made involving said final value.

Mr. LA FOLLETTE. You see, the order as to rates involves the value.

Mr. SMITH of Georgia. Should not that be "based upon the final value" rather than "involving final value"? Might not that language be construed to mean that the order itself was simply one fixing the value?

Mr. LA FOLLETTE. I do not think so.

Mr. SMITH of Georgia. I was afraid the language might be construed to limit the modified order.

Mr. CUMMINS. May I suggest that if the Senator will read the next clause he will find that it is perfectly clear?

Mr. SMITH of Georgia (reading)—

If the commission shall alter, modify, or amend its order, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon, as though made by the commission in the first instance.

I suppose, then, that means the order complained of before the court would be the order fixing the rate.

Mr. LA FOLLETTE. Fixing the rate.

Mr. SMITH of Georgia. Therefore, this language should be construed to reach the order fixing the rates.

Mr. LA FOLLETTE. It would be so construed by the courts, I have no doubt.

Now, Mr. President, just one thing more and I am done. I neglected to call attention to one other amendment, which provides for ascertaining:

In detail and separately from improvements, the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same, and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value.

This requires the commission to ascertain the original cost of the land which the railroad company has acquired for its purposes as a common carrier and also the present value of such land. It will ascertain this original cost and present value separately for improvements. The primary purpose in establishing these values separately I shall state very frankly. It is to put into the possession of the commission and upon record the data which will enable us ultimately to try out the question and determine the right of the railroads to capitalize the unearned increment.

I do not propose to argue that issue now. It will be contested upon both sides with all the vigor which its great importance demands. The land for rights of way, stations, yards, terminals, and the like, much of which was acquired through the exercise of the power of eminent domain, has, because of the improvement of adjoining property, increased in value enormously. In the meantime the public has made it profitable for the railroads to hold and use this property. The railroads were not given the power of eminent domain by the State to enable it to speculate in real-estate values, but solely to take the land for a public use.

Whatever may be the tendency in some of the decisions at present, the everlasting right will prevail in the end. It may take many years. The courts may fortify error with error, but justice will finally prevail. This important provision opens the way, as do others in this bill, to secure ultimate justice for the public.

This bill, then, as it is proposed to be amended, provides in specific terms for ascertaining the values of the property of the common carriers engaged in interstate commerce. By its terms these values will be so classified and analyzed as to admit of raising every question material to fair valuation between the carrier and the public.

When completed the work of the commission will show just how much the common carrier has invested, and it will also show just how much of the total amount invested was contributed by the public; it will show the value of the unearned increment on lands, rights of way, and terminals; it will show how much surplus has been invested in extensions, permanent improvements, and betterments. Upon this showing the right of the carrier to capitalize unearned increment and surplus so invested can be tried out and determined. Whether Congress has power by legislation to exercise a control and fix limitations regarding these matters is reserved for future consideration and action.

Mr. POMERENE. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Wisconsin yield to the Senator from Ohio?

Mr. LA FOLLETTE. Certainly.

Mr. POMERENE. Before the Senator takes his seat I wish to call his attention to page 10 of the bill, where it is provided that—

If upon the trial of any action involving a final value fixed by the commission evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, shall transmit a copy of such evidence to the commission.

And so forth.

From a literal reading of this it would seem that if there was the slightest additional evidence—

Mr. LA FOLLETTE. I think there should be—

Mr. POMERENE. I was going to suggest, on page 11, line 1, after the word "thereto," to insert "and substantially affecting said value."

Mr. LA FOLLETTE. I remember there was a discussion in the committee as to whether the word "material" should be

used, and I think that the committee assented to it. Through some slip we did not get it down on the copy brought in.

Mr. POMERENE. I shall at the proper time ask that that amendment—

Mr. LA FOLLETTE. What is the language?

Mr. POMERENE. I propose to offer as an amendment, on page 11, line 1, after the word "thereto," to insert "and substantially affecting said value."

The PRESIDENT pro tempore. Another amendment is now before the Senate.

Mr. LA FOLLETTE. I believe that is so, Mr. President.

Mr. BRISTOW. Mr. President, I rise to speak more with a view of securing the opinion of members of the committee as to what the phraseology of the bills means than anything else, because I believe I am in perfect harmony with the views as expressed by the Senator from Wisconsin as to what values ought to be considered.

In answer to a question which I asked the Senator from Wisconsin as to the meaning of the term "the original cost to date" he indicated that that was a term used to apply to the expenditures that had been made in detail from the beginning of the construction of the road down to the present date. If all the elements of such cost will be set forth so that we may know how much was expended for a track that has been abandoned and no longer used and how much has been expended for a new track that has been built for the purpose of economizing operations, that is entirely satisfactory to me. What I wanted to know was whether the original cost to date would require the commission to set forth these various elements of cost in detail.

Mr. LA FOLLETTE. The Senator will notice in line 20 they are required to report in detail, and they are also required to analyze their costs. I will say to him that wherever there has been an ascertainment of the original cost to date, in so far as I know anything about it, they have gone into every item, and their cost sheets show everything of that sort. The trouble with attempting to enumerate what they shall do, to fix a limitation, is that if you say that they shall make statements about improvements under that they probably would not be required to go into detail about anything else except improvements. There are many items of the original cost that would not be covered by improvements, and I think there would be a danger in making any attempt to list and specify there unless you are certain that you were covering every single item of expenditure.

Mr. BRISTOW. There is one point I wanted to bring out in regard to that feature of the bill that requires the commission to ascertain the cost of production new. Such a finding, in my opinion, is not of any great value, so far as the rate making is concerned. It is a vacillating quantity; it does not represent in any sense the investment of the company in the construction of the road. To illustrate: In a suit that was pending the estimated cost of the reproduction of the Northern Pacific Railroad was involved. I am informed the same engineer reported in 1907 and in 1909 as to the cost of reproduction new, and the value fixed in 1909 was \$185,000,000 more than the same engineer fixed the value of reproduction new in 1907.

Mr. LA FOLLETTE. That is a difference of 25 per cent.

Mr. BRISTOW. It is a difference of 25 per cent in two years as to the cost of reproducing new the railroad. That did not have anything to do with the investment which had been made in this property, and it seems to me that it is not a very material element of value to be considered in rate making.

There was another item that was taken into consideration at the same time by this engineer.

Mr. LA FOLLETTE. If the Senator will permit me, there was evidently just the employment of the engineer's imagination in that case, and the Interstate Commerce Commission was utterly helpless and powerless, and so they appealed to Congress, as they have done for the last 9 or 10 years, to give them authority to ascertain the value of the properties of the railroad company, in order that they might meet just such testimony as that. But let me say to the Senator on that question, that the Supreme Court of the United States has listed that as one of the values to be considered, and it has not yet by any express declaration eliminated it as a value to be ignored. So it seemed to the committee that we ought to give it its place here. I will, however, say to the Senator that I am confident that the views of all the advanced commissions of the country that are doing this valuation work are that there should be a very inconsiderable weight given to reproduction new.

Mr. BRISTOW. Now, in considering reproduction new, the engineer considers the time which it would take to build the road. I will illustrate by the Santa Fe Railroad. It would require to construct the Santa Fe Railroad, as it now exists, probably 10 years, perhaps longer than that. I have been advised that the engineers, in estimating the cost of reproducing

new, take into consideration the value of the capital used during the period of time that construction was going on, and, of course, they give no credit to the earnings which the road would have made during its reconstruction. So in that respect the charge is made as to the cost of reproducing new, while the earnings that the property made during the course of its growth is not taken into consideration.

Mr. LA FOLLETTE. If the Senator will permit me, I will say that I have here a very recent volume, Valuation of Public-Service Corporations, that gives all of the decisions up to the end of 1912, and I do not know but that it gives some of the decisions later than that; it is just out. I will say to the Senator that it is perfectly apparent that substantially all of the commissions of the country are making the valuation of reproduction new a negligible quantity. I do not believe that the Senator needs to feel any apprehension about the Interstate Commerce Commission giving undue weight to that element. That was incorporated in the bill because it was felt that it would save contention, since it can be asserted that there is the authority of the court for it.

Mr. BRISTOW. Continuing the statement as to the estimate of cost of the Northern Pacific Railroad, I will say that this element of interest which I have referred to that was counted in by the engineer in the 1907 valuation on the property—that is, the interest on the money that was used in the road's construction during the period of time necessary to construct it—was \$22,677,000, while in the valuation of 1909, two years later, the item of interest aggregated \$164,000,000. This was an estimate on the same property by the same engineer. He was simply estimating the cost of reproduction at different periods of the same railroad.

Another item was the estimate of local organization and expense during this imaginary construction of the road. In 1907 this figure was fixed at \$3,736,000, while in 1909 it was estimated at \$12,136,000. I simply incorporate these figures into my remarks to show that, in my opinion, the question of reproduction is not a very substantial or certain element of value to take into consideration.

What I regard as the most important phase of the bill, however, is that which relates to the unearned increment. The Pennsylvania Railroad Co., to illustrate, has of course very valuable terminals in the cities of Washington, Baltimore, Philadelphia, and New York. It would be practically impossible to construct a railroad from Washington to Boston now and get desirable terminal facilities in the great cities between here and there. There is not enough money available for such purpose. Those railroads that now exist which have terminal facilities in those cities secured them at a time when it did not require a great investment, comparatively speaking. They had the right to use certain lands for this specific purpose. I do not believe that the increase in the value of that land due to the growth of population is an element of value which any railroad company is entitled to use in rate making.

The unearned-increment value of that property is due to the increase of population and the growth of the business of the cities. The franchise—that is, the right to use that real estate—if capitalized at the amount that it would now cost to secure such real estate, would amount to mortgaging to the corporation the commercial development of the country. I do not believe that the increased value of the right of way or any element of unearned increment should be taken into consideration in dealing with the value of the property of these carriers, so far as rate making is concerned.

I am anxious to have the opinion of the Senator from Wisconsin and the other Senators on the subcommittee, who have given this subject very great thought, as to whether the language on page 10, taken in connection with that which precedes it, would recognize the principle that the carriers have a right to capitalize unearned increment or to charge rates upon a value based in any degree upon unearned increment.

I read from line 10, page 10, of the bill:

All final valuations by the commission and the classification thereof shall be published, and shall be prima facie evidence of the value of the property in all proceedings under the act to regulate commerce as of the date of the fixing thereof—

And so forth.

Since we provide in the bill for ascertaining the value of the unearned increment, does the language I have read on page 10 authorize such value to be taken into consideration as prima facie evidence of the value of the property? Does the Senator understand the question?

Mr. LA FOLLETTE. I think I understand the Senator. The provision is:

All final valuations by the commission and the classification thereof shall be published, and shall be prima facie evidence of the value of the property in all proceedings under the act to regulate commerce as of the date of the fixing thereof.

Of course it has to be construed with everything that precedes and that follows it in the bill.

Mr. BRISTOW. Does that recognize—

Mr. LA FOLLETTE. I do not think it recognizes any particular value; it simply provides that they shall all be ascertained—

Mr. BRISTOW. We provide that this unearned increment shall be ascertained—

Mr. LA FOLLETTE. That they shall become tentative values until this hearing is had.

Mr. BRISTOW. This is a final valuation. The language is:

All final valuations by the commission and the classification thereof shall be published, and shall be prima facie evidence of the value—

Mr. LA FOLLETTE. This valuation is simply prima facie evidence of the value, and when the case is heard upon a question of rates before the court those values are all subject to attack both by the public and by the railroad company.

Mr. BRISTOW. Does that clause or phrase require the commission or the court to take into consideration the value of the unearned increment as an element in fixing a rate?

Mr. LA FOLLETTE. It certainly does not.

Mr. BRISTOW. That is the question that has bothered me.

Mr. NELSON. Mr. President, will the Senator allow me?

The PRESIDENT pro tempore. Does the Senator from Kansas yield to the Senator from Minnesota?

Mr. BRISTOW. Certainly.

Mr. NELSON. On the very point the Senator from Kansas suggests, I desire to say that the State of Minnesota and other States were defeated under the decision of Judge Sanborn on the valuation theory based upon increment and increase in value. For instance, in that case the railroad company went on to show that to get the right of way now would cost them a hundred dollars an acre, whereas when it was secured a few years ago, to my knowledge, they paid only from five to ten dollars an acre. Then they went on in the same case to show the value of their terminals in the Twin Cities, which they had originally secured for a merely nominal sum, but owing to the growth of the cities and to the fact that they had become great railroad centers the terminals had increased in value more than a thousand per cent. The railroad company put that increased valuation into the case, both as to the right of way and as to the terminals, and then, on the basis of that, the court said that it was not getting income enough. So it was that basis of physical valuation used by the court in that case that beat us in the court below, the circuit court of appeals; and if we are beaten in the Supreme Court it will be because of that very thing.

Mr. CUMMINS. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Kansas yield to the Senator from Iowa?

Mr. BRISTOW. I do.

Mr. CUMMINS. I think possibly there is a little misapprehension here about the bill. It seems to me that the Senator from Kansas does not look at it from the proper point of view. The Congress of the United States can not declare the standard of values by which the property of any railroad company can be measured, nor the value of any other property. That is purely a judicial question, and it finally will be settled by the courts. Congress or its instrumentality, the Interstate Commerce Commission, fixes the rates of the railroads. The railroad company attacks the rate. It attacks it because the legislature, or the commission exercising legislative functions, has invaded its constitutional rights; that is, has taken its property without due process of law or has taken it without just compensation. That is the basis of all the appeals or proceedings which the railroads bring in the courts in order to annul or set aside an order of the commission. When such a case comes to the court it is for the court to say, and the court will say in every instance, what the evidence shows in regard to the value of the property used by the common carrier.

Mr. NELSON. Right there may I ask a question?

Mr. CUMMINS. Here we are simply attempting to furnish the people of the country the evidence from all the various standpoints, which they can not furnish themselves because of the vastness of the undertaking.

Mr. NELSON. I wanted just to put one very brief question to the Senator to see if I am correct. Is not the finding of the Interstate Commerce Commission upon the facts in a rate case, if there is evidence to support it, binding upon the court?

Mr. CUMMINS. It is.

Mr. NELSON. And the court can not overrule it or retry it?

Mr. CUMMINS. That, however, is only upon the issue; but if the commission should find the Pennsylvania Railroad, for instance, was worth only \$10, that would not be binding in any court. Of course, the Senator from Minnesota will agree with me about that.

Mr. NELSON. Of course, if there is no evidence to support it.

Mr. CUMMINS. But when the case reaches the court the complainant has the right to introduce testimony regarding the value of the property that has been devoted to the public use and concerning which the rate is fixed. There is nothing that can prevent—nor do I believe there is anything that can prevent—the exercise of that right on the part of the common carrier.

This bill, however, is to furnish both the common carrier and the shipper, or the State, or whoever may be the adversary, prima facie evidence with regard to the value of the property that has been devoted to the public use and to control and to regulate which the rate attacked has been made.

Mr. NELSON. Mr. President, will the Senator allow me, in connection with his remarks, to make a statement?

Mr. CUMMINS. Certainly.

Mr. NELSON. The one thing that I had difficulty with in this bill—most of it is good, and I approve of it—is that part of the bill from line 21, on page 10, down to line 18, on page 11. That seems to contemplate, if I understand the language, that the court is to retry the facts found by the Interstate Commerce Commission. Let me read that:

If upon the trial of any action involving a final value fixed by the commission—

That may be in a rate case—

evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for such time as the judgment, shall transmit a copy of such evidence to the commission, court shall determine from the date of such transmission—

And so forth.

That clearly contemplates that there must be a retrial before the court upon the facts. I do not understand that to be the existing law. I understand the existing law to be that the Interstate Commerce Commission passes upon the question of fact as to whether or not a rate is reasonable, and its finding, if it is supported by evidence, binds the court above.

Mr. CUMMINS. That, however, does not include the question of value. That is seen by a reference to the very case to which the Senator from Minnesota has just referred, where the Northern Pacific road—

Mr. LA FOLLETTE and Mr. OWEN addressed the Chair.

The PRESIDENT pro tempore. The Chair is unable to determine who is entitled to the floor. Does the Senator from Kansas yield to the Senator from Iowa?

Mr. BRISTOW. I yield to the Senator from Iowa.

Mr. CUMMINS. I will surrender the floor until I can take it in my own right, then. I wished to answer the question of the Senator from Kansas, but I will withhold my answer.

Mr. BRISTOW. I am anxious to have the question answered.

Mr. OWEN. Mr. President—

The PRESIDENT pro tempore. The Chair simply desires to suggest that for the orderly transaction of business it is necessary that the Chair should be addressed, and Senators should get permission to interrupt. There were five Senators on the floor at the time the Chair made the suggestion.

Mr. CUMMINS. Mr. President, I hope I have not incurred the censure of the Chair.

The PRESIDENT pro tempore. Not at all.

Mr. CUMMINS. I did address the Chair; I did secure the consent of the Senator from Kansas to answer. I was therefore a little surprised to have it suggested that I was improperly occupying the floor.

The PRESIDENT pro tempore. The Chair owes the Senator an apology, then, if that is the fact. The Chair overlooked that.

Mr. BRISTOW. The Senator, however, had not arrived at the real, vital part of his answer to the question I asked. It is the important question in the bill to me. I am very firmly of the opinion that a railroad company has no right to charge the public with rates that will enable it to earn a return on the unearned-increment value of its right of way and its terminals; but I want the lawyers who have had charge of the framing of the bill to construe the language, as to whether or not the lines that I refer to, on page 10, beginning with the words "All final valuations," and so forth, do recognize the fact, and make prima facie evidence as a part of the value this element of value known as unearned increment.

Mr. OWEN. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Kansas yield to the Senator from Oklahoma?

Mr. BRISTOW. I do.

Mr. OWEN. Mr. President, the words "prima facie" in line 12 necessarily exclude finality. It is only prima facie as to the fact. The fact itself may be disputed; but the principle to

which the Senator very properly refers would not appear in this finding.

The facts having been ascertained *prima facie*, the facts themselves being subject to correction, then the principle of whether or not the unearned increment could be capitalized and the public charged with interest upon the unearned increment is a principle to be determined by the court upon debate. Facts, merely, are ascertained; and even the facts are not ascertained with complete finality, but merely *prima facie*.

The Senator from Minnesota points out that the statement that—

If, upon the trial of any action involving a final value—

The value fixed by the commission—

evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto—

it shall send it back for ascertainment of the fact before the court proceeds—is only a declaration that this finding of fact upon certain evidence submitted shall not be final, but may be again sent back if those concerned offer additional evidence which was not before the commission. The purpose of that section is to prevent a trick of discrediting those who find the facts by submitting to those charged with the finding of the facts incomplete evidence which afterwards is more completely submitted to the court, and the court, finding that additional evidence or materially different evidence is submitted to the court from that which was originally submitted to the commission, simply sends it back, as a court would send a case back to a commissioner to further ascertain the fact upon new evidence.

That answers the question of the Senator from Minnesota. I have already answered the question submitted by the Senator from Kansas.

Mr. THOMAS. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Kansas yield to the Senator from Colorado?

Mr. BRISTOW. I do.

Mr. THOMAS. I understood the Senator from Kansas to say, and I quite agree with him, that this unearned increment should not be the subject of capitalization. I want to inquire whether the Senator thinks it should be assessed against the companies for taxation.

Mr. BRISTOW. I think not, of course. I do not think a value that can not be used as a basis of earning power should be used as a basis of taxation.

Mr. THOMAS. I think it is so assessed generally all over the country and taxes collected upon it.

Mr. CLAPP and Mr. OLIVER addressed the Chair.

The PRESIDENT pro tempore. Does the Senator from Kansas yield to the Senator from Minnesota, who first addressed the Chair?

Mr. BRISTOW. I do.

Mr. CLAPP. I wanted to say this: I do not think the Senator from Kansas exactly grasps the force of these provisions. I agree with the Senator from Kansas that the unearned increment should not be the basis; but suppose the court, when it comes to pass on the question, should regard it otherwise? The theory of this bill is that the Government shall ascertain these various values in these various ways, to the end that the court, if it rejects one basis or adopts another, has the figures before it, instead of simply reversing the order and requiring those decisions to be litigated *de novo*. That is the theory and the principle upon which the bill is framed; not that it is conclusive upon anybody, for it is for the courts to say which of these various bases it will take in the last analysis.

Mr. OLIVER. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Kansas yield to the Senator from Pennsylvania?

Mr. BRISTOW. I do.

Mr. OLIVER. I should like to ask the Senator from Kansas and the Senator from Iowa, who, I understand, is about to speak, as to the probable time they will occupy in discussing this bill. I think if it is likely that great time will be consumed we should take a recess and come back here this evening.

Mr. BRISTOW. I will say, so far as I am concerned, that I am through. All I wanted was an expression, in regard to the construction of the language I have read here, from the Senator from Wisconsin [Mr. LA FOLLETTE], who is in charge of the bill, and from the Senator from Iowa [Mr. CUMMINS], who is a member of the subcommittee. I have great confidence in their judgment, and, knowing that their purposes and mine are exactly the same in regard to this valuation, I will yield the apprehensions that I have as to the construction of this language to their judgment, supplemented, as it is, by that of the Senator from Oklahoma and the Senator from Minnesota, in whose judgment I also have great confidence. I am for this bill

if it does not recognize or fortify the theory that carriers have a right to capitalize or earn returns on unearned increment or a value that cost them nothing to secure. If it did recognize such a right, I would not support it; but having been assured by the authors of the bill that no such right is recognized by the language used, I will vote for the measure.

Mr. POINDEXTER. Mr. President, I was going to put what I had to say in the form of a question to the Senator from Kansas, but I only want to call attention to a possible construction of this language which I think is the danger that the Senator from Kansas has in mind.

Of course I know that the view of the framers of the bill is that it does not undertake to say what value or what class of values shall be used as a basis for fixing rates. It leaves that entirely undetermined, and the Senator from Kansas is apprehensive that this language will be construed to have the effect of a legislative declaration that the unearned increment shall be included.

Congress has a right to do that. That would not be any confiscation of the property of the carrier. It would be increasing the valuation upon which rates must be based. Congress, under the decision of the courts, has not the power to put the valuation so low as to amount to a confiscation of property. But there could be no constitutional objection raised to a legislative act declaring that the unearned increment shall be included in the valuation, because that would be within the purview of Congress in fixing public policy. Congress has power to fix railroad rates, and out of that power grows power to fix the basis upon which rates shall be determined.

There is this possible construction of the act: The language to which the Senator from Kansas has called attention is:

All final valuations by the commission—

That includes this valuation, among others, which includes the unearned increment—

All final valuations by the commission and the classification thereof shall be published and shall be *prima facie* evidence of the value of the property in all proceedings under the act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the act approved February 4, 1887.

One of the judicial proceedings for the enforcement of that act would be a judicial proceeding to determine whether or not a rate fixed by the Interstate Commerce Commission was a reasonable rate or a lawful rate. Here is an act which says that in that action—

All final valuations by the commission \* \* \* shall be *prima facie* evidence of the value of the property.

And there is danger that some court would come along and construe that language as being a declaration of Congress that the valuation, including the unearned increment, shall be taken as a basis of fixing the rate. It could be easily removed from the realm of doubt by the insertion of a few words negating that possible construction.

Mr. CUMMINS. Mr. President, I do not quite agree with the Senator from Washington with regard to the competency of Congress to say the unearned increment shall not be considered as a part of the value of railway property. However, that is not material to this discussion.

Mr. POINDEXTER. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from Washington?

Mr. CUMMINS. I do.

Mr. POINDEXTER. The Senator, I think, misapprehended what I said. What I said, or intended to say, was just the opposite. I did not say Congress probably has not the right to say that the unearned increment shall not be considered. What I said was that Congress has the right to say that it should be considered, which is quite a different proposition.

Mr. CUMMINS. I have a little doubt about that also, Mr. President. However, neither is material to this discussion.

It seems to me, as I tried to say before, that the purpose of the bill is a little bit misapprehended. This bill is intended to authorize the Interstate Commerce Commission to send out its appraisers, its experts, and secure almost all the information that is conceivable with regard to the value of railway property. When all this information is collected, then the commission hears the case and decides what is the fair value of the railroad property.

Undoubtedly the information sought here, among other things, includes the unearned increment, or the increased value of lands, lots, and terminals of the railway company. But no court has hitherto said that the unearned increment ought not to be and must not be considered as a part of the value of the railway property. Personally, I do not believe it should be considered. I have another standard in my mind, namely, the value for the purposes of a common carrier rather than the

value as determined by the use to which adjacent property may be put.

However that may be, this bill recognizes what the courts have already declared may be elements in the value of railway property. All the knowledge that can be secured is gathered and laid before the commission. Then the railroads are called, the public is called, and they try out the question before the commission as to the value of any particular railway property.

Mr. NELSON. Will the Senator yield to me?

Mr. CUMMINS. Certainly.

Mr. NELSON. The difficulty with me about the bill is in the following language:

If, upon the trial of any action involving a final value fixed by the commission, evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the commission, etc.

I will not read the entire paragraph. Does that contemplate that this final ex parte valuation to be made by the commission is finally to be revised by the court? Is it ultimately to be a court valuation?

Mr. CUMMINS. The Senator is thinking of one thing and I am talking about another. When the suit is brought before the court in a proceeding to attack, annul, and set aside the order of the commission—

Mr. NELSON. In a rate case.

Mr. CUMMINS. Then the finding which the commission has made with regard to the value of the railway property, if that becomes material, is prima facie evidence of the value of that property.

Mr. NELSON. But this contemplates, if you read the paragraph through—

Mr. CUMMINS. Just allow me. The railroad company need not introduce it. It can go on and introduce any evidence it pleases with regard to the value of the property of the company. The final finding of the commission in this proceeding is prima facie evidence in that suit.

Mr. NELSON. I understand that.

Mr. CUMMINS. But it is not conclusive. Either party can introduce additional testimony.

Mr. NELSON. In that case pending?

Mr. CUMMINS. Yes.

Mr. NELSON. Before the commission?

Mr. CUMMINS. Before the court.

Mr. NELSON. In a rate case retried before the court?

Mr. CUMMINS. Certainly.

Mr. NELSON. On the facts?

Mr. CUMMINS. Certainly.

Mr. NELSON. I suppose the finding of the commission on the facts—

Mr. CUMMINS. The commission does not make any finding of the value of the property. The commission sees whether any rate is a fair and reasonable rate. The railroad says "That is not true; it is not a fair and reasonable rate; it confiscates our property. Therefore we bring a suit to enjoin the commission from putting the rate into force." Thereupon it proceeds to prove the value of the property, and that it rendered the service for which it makes the charge. The Senator from Minnesota does not say that the common carrier can not in such a suit as that prove the value of the property which renders the service which has been regulated by the commission. I am sure he will not assert that.

Mr. NELSON. What I mean is this: Does this refer to an actual trial, an actual rate case, or does it refer simply to a case concerning the valuation fixed by the commission?

Mr. CUMMINS. It refers to an actual rate case.

Mr. NELSON. Let me read the language here:

If upon the trial of any action involving a final value fixed by the commission, evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment shall transmit a copy of such evidence to the commission—

Mr. CUMMINS. No; not judgment on the value of the property, judgment upon the order which has been entered by the commission regulating a rate or fixing a rate.

Mr. NELSON (reading)—

the court before proceeding to render judgment shall transmit a copy of such evidence to the commission and shall stay further proceedings in said action for such time as the court shall determine from the date of such transmission.

In other words, if the court concludes that the Interstate Commerce Commission has not found the facts properly they are to be retried in the court, and then the court is to transmit it to the Interstate Commerce Commission.

Mr. LA FOLLETTE. Oh, no, no.

Mr. ROOT. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from New York?

Mr. CUMMINS. Certainly.

Mr. NELSON. I want an understanding on that question.

Mr. ROOT. I wish to make a suggestion to the Senator from Minnesota. There may now be an issue raised upon which a question of value will be a relevant fact. The Interstate Commerce Commission has made an order fixing the rates, and the railway company comes into court asserting that those rates are confiscatory. Upon that issue the question of value is a relevant and material fact, is it not?

Under the provision the Senator from Minnesota has adverted to it seems to me that that question of value is not made material and relevant under any circumstances in which it is not now material and relevant. It does not broaden the jurisdiction of the court to consider that question of value at all. It merely relates to the evidence of value in the cases where the court now can consider it and where they will then consider it. It merely puts into the trial of the question of value where it can now be tried and will then be tried new prima facie evidence supplied by the determination of the commission. It does not permit the court to retry that case or to review the decision of the commission under any other circumstances than they can do it now.

Mr. NELSON. Let me call the Senator's attention to this language:

The court, before proceeding to render judgment, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for such time as the court shall determine from the date of such transmission. Upon the receipt of such evidence—

Not the evidence taken before the commission, the evidence taken in court—

the commission shall consider the same and may fix a final value different from the one fixed in the first instance

In other words, instead of acting on their own volition and in their own manner, the court takes evidence and sends it to them, and upon that evidence taken in court they have the liberty of changing the judgment they formed in the first instance.

Mr. CUMMINS. They have.

Mr. NELSON. Is not that a retrial of the case upon the facts in the language of the bill? Does not that take the legislative function we have transferred to the Interstate Commerce Commission upon the question of fact? Does it not indirectly transfer it to the courts?

Mr. CUMMINS. I think not, Mr. President. I think that is intended simply to enable the commission to change the order with respect to the rate that it has already made. If evidence with regard to value is developed in the court that has not been developed before the commission in its general work, and it has made an order fixing a rate upon a value which it finds to be wrong, then it is given the opportunity to change the order which is being attacked in the court, as may be required by the additional or different evidence with regard to the value of the property. I do not think that it changes in the least degree the relation of the commission to the court. It simply furnishes, as I said in the beginning, evidence either for the railway company or for the public with regard to the value of the property that is devoted to public use—evidence that, of course, is not conclusive, and, in my opinion, it would not be competent for us to make it conclusive.

Mr. NELSON. But the Senator will concede that it changes the procedure which now prevails.

Mr. CUMMINS. I do not think it does at all; that is, if the Senator means the substance of the procedure. The railway company that complains of the action of the commission must still bring suit in a court of competent jurisdiction to annul the order of the commission. When it has brought the suit and made the issue it may take the work of the commission that is here provided for and introduce it as prima facie evidence of the value of the property, or the Government can take the work of the commission and introduce it as prima facie evidence of the value of the property. That is the only respect in which the relation has been changed.

Mr. NELSON. Let me call attention here to the final language of this paragraph.

If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

Mr. CUMMINS. Certainly.

Mr. NELSON. Now, what does this contemplate? It contemplates that after the Interstate Commerce Commission has made a finding and issued an order the other party goes into court, evidence is taken in the court, and that evidence is to be sent back to the Interstate Commerce Commission, so that they can revise and change their judgment in the first instance. I do not understand that any such practice prevails under the law now. I have never heard of that. Has the Senator heard of it?

Mr. CUMMINS. It can not, except so far as the rehearing is concerned. The commission has a perfect right to rehear

any case that may be before it, or that it may have decided, and enter another and a different order. Of course there is no provision in the law now for sending back the additional evidence with regard to value, because we have no provision in the law now for securing the proof of value.

Mr. NELSON. Does it not amount to this, to talk plainly? The Interstate Commerce Commission has a hearing, takes the evidence, fixes the rate. The railroad company go into court to attack that, introduce more evidence, and then, after they have introduced more evidence, the court is to stay the case, send that evidence back to the Interstate Commerce Commission, and the poor commission is at liberty to revise its hearings. But this provision states that if they see fit not to do so, they can adhere to their original judgment.

Mr. CUMMINS. That is all right.

Mr. NELSON. Then why should we take this evidence in the court and send it back to the commission?

Mr. CUMMINS. I do not understand the Senator from Minnesota. He does not seem to me to have the same conception of the procedure that I have. I can not quite gather his objection to it. I thought he started out with the idea that it broadens the review of the court over the action of the commission. Now he seems to object to it because it increases the labor of the commission.

Mr. NELSON. No; I do not. I object to it because it injects a new mode of trial before the Interstate Commerce Commission, and it makes a double trial. After the railroads go into court and evidence is taken in the case different from that before the Interstate Commerce Commission, the case is to be stayed and the evidence is to be sent back to the commissioners, and they are to mulch over it again. Here is the language:

If the commission shall alter, modify, or amend its order, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon, as though made by the commission in the first instance.

Now listen to this language:

If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

Let me call attention to the decision of the Supreme Court recently, at the present term, in the case of the Interstate Commerce Commission and the United States, appellant, against The Louisville & Nashville Railroad Co.:

On the appeal here the Government insisted that while the act of 1887 to regulate commerce (24 Stat., 379, secs. 14, 15, 16) made the orders of the commission only prima facie correct, a different result followed from the provision in the Hepburn Act of 1906 (34 Stat., 584, sec. 15), that rates should be set aside if after a hearing the "commission shall be of the opinion that the charge was unreasonable." In such case it insisted that the order based on such opinion is conclusive and (though Interstate Commerce Commission v. Union Pacific Railroad, 222 U. S., 547, was to the contrary) could not be set aside, even if the finding was wholly without substantial evidence to support it.

1. But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved.

In this case the court held that the Interstate Commerce Commission could not, on its own knowledge, on its own records, decide the case; that there must be a hearing and evidence be taken in the case before they could render any decision.

Mr. CUMMINS. The view of the Senator from Minnesota does not seem to me to be a sound one. I have already stated my understanding of that paragraph and my general opinion of the bill. While I am inflexibly opposed to capitalizing what is known as unearned increment, I am not opposed to securing from a governmental tribunal a judgment as to the real value of the railroad property, and if our Government tribunal includes unearned increment, we must submit unless there is a legislative escape, and I do not believe there is.

The PRESIDENT pro tempore. The question is on agreeing to the amendment of the committee as reported.

The amendment was agreed to.

The next amendment of the Committee on Interstate Commerce was, on page 7, line 1, before the word "commission," to strike out "The" and insert "Except as herein otherwise provided, the"; in line 7, after the word "and," to insert "separately"; and in line 9, after the words "District of Columbia," to insert "classified and in detail as herein required," so as to make the paragraph read:

Except as herein otherwise provided, the commission shall have power to prescribe the method of procedure to be followed in the conduct of the investigation, the form in which the results of the valuation shall be submitted, and the classification of the elements that constitute the ascertained value, and such investigation shall show the value of the property of every common carrier as a whole and separately, the value of its property in each of the several States and Territories and the District of Columbia, classified and in detail as herein required.

The amendment was agreed to.

The next amendment was, on page 8, line 8, after the word "law," to insert "Unless otherwise ordered by the commission,

with the reasons therefor, the records and data of the commission shall be open to the inspection and examination of the public," so as to make the paragraph read:

Every common carrier subject to the provisions of this act shall furnish to the commission or its agents from time to time and as the commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all agents of the commission free access to its right of way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every common carrier is hereby directed and required to cooperate with and aid the commission in the work of the valuation of its property in such further particulars and to such extent as the commission may require and direct, and all rules and regulations made by the commission for the purpose of administering the provisions of this section and section 20 of this act shall have the full force and effect of law. Unless otherwise ordered by the commission, with the reasons therefor, the records and data of the commission shall be open to the inspection and examination of the public.

The amendment was agreed to.

The next amendment was, on page 8, line 17, after the word "time," where it occurs the second time, to strike out "as may be required for the proper regulation of such common carriers under the provisions of this act"; in line 19, after the word "its," to strike out "valuation of property" and insert "valuations"; in line 20, after the word "correction," to insert "classified and"; in line 21, after the word "and," where it occurs the first time, to insert "separately"; and, in line 22, after the word "which," to insert "valuations, both original and corrected, shall be tentative valuations and," so as to make the paragraph read:

Upon the completion of the valuation herein provided for the commission shall thereafter in like manner keep itself informed of all extensions and improvements or other changes in the condition and value of the property of all common carriers, and shall ascertain the value thereof, and shall from time to time revise and correct its valuations, showing such revision and correction classified and as a whole and separately in each of the several States and Territories and the District of Columbia, which valuations, both original and corrected, shall be tentative valuations and shall be reported to Congress at the beginning of each regular session.

The amendment was agreed to.

The next amendment was, on page 9, line 2, after the words "in its," to strike out "valuation" and insert "valuations of each class of property"; and in line 4, after the word "shall," to strike out "report currently to the commission, and as the commission may require, all improvements and changes in its property, and file with the commission copies of all contracts for such improvements and changes at the time the same are executed" and insert "make such reports and furnish such information as the commission may require," so as to make the paragraph read:

To enable the commission to make such changes and corrections in its valuations of each class of property, every common carrier subject to the provisions of this act shall make such reports and furnish such information as the commission may require.

The amendment was agreed to.

The next amendment was, on page 9, line 11, before the word "valuation," to insert "tentative"; in the same line, after the word "carrier," to insert "as herein directed"; in line 12, before the word "valuation," to strike out "said" and insert "such"; in line 14, after the word "carrier," to strike out "stating" and insert "the Attorney General of the United States, the governor of any State in which the property so valued is located, and to such additional parties as the commission may prescribe, stating"; in line 19, after the word "allow," to strike out "the carrier"; and in line 22, after the word "final," to insert "as of the date thereof," so as to make the paragraph read:

Whenever the commission shall have completed the tentative valuation of the property of any common carrier, as herein directed, and before such valuation shall become final, the commission shall give notice by registered letter to the said carrier, the Attorney General of the United States, the governor of any State in which the property so valued is located, and to such additional parties as the commission may prescribe, stating the valuation placed upon the several classes of property of said carrier, and shall allow 30 days in which to file a protest of the same with the commission. If no protest is filed within 30 days, said valuation shall become final as of the date thereof.

The amendment was agreed to.

The next amendment was, on page 9, line 23, after the word "filed," to strike out "by any common carrier"; on page 10, line 3, after the word "presented," to strike out "by such common carrier"; in line 4, after the words "port of," to strike out "its" and insert "any such"; in line 5, after the word "such," to insert "tentative"; in line 7, after the word "valuation," to strike out "is incorrect" and insert "should not become final"; in line 9, after the word "corrected," to insert "tentative"; in the same line, after the word "final," to insert "as of the date thereof"; in line 12, after the word "evidence," to strike out "relative to" and insert "of"; and in line 13, after the word "under," to strike out "this act" and insert "the act to regulate commerce as of the date of the fixing

thereof, and in all judicial proceedings for the enforcement of the act approved February 4, 1887, commonly known as 'the act to regulate commerce,' and the various acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission," so as to read:

If notice of protest is filed, the commission shall fix a time for hearing the same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented in support of any such protest so filed as aforesaid. If after hearing any protest of such tentative valuation under the provisions of this act the commission shall be of the opinion that its valuation should not become final, it shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof. All final valuations by the commission and the classification thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under the act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the act approved February 4, 1887, commonly known as "the act to regulate commerce," and the various acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

The amendment was agreed to.

The next amendment was, on page 10, after line 21, to insert:

If upon the trial of any action involving a final value fixed by the commission, evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for such time as the court shall determine from the date of such transmission. Upon the receipt of such evidence the commission shall consider the same and may fix a final value different from the one fixed in the first instance, and may alter, modify, amend, or rescind any order which it has made involving said final value, and shall report its action thereon to said court within the time fixed by the court. If the commission shall alter, modify, or amend its order, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

The amendment was agreed to.

The next amendment was, on page 12, line 1, after the word "in," to strike out "this act" and insert "section 16 of the act to regulate commerce," so as to read:

The provisions of this section shall apply to receivers of carriers and operating trustees. In case of failure or refusal on the part of any carrier, receiver, or trustee to comply herewith, such carrier, receiver, or trustee shall forfeit to the United States the sum of \$500 for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in section 16 of the act to regulate commerce.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

Mr. NEWLANDS. Mr. President, I regard with great gratification the almost unanimous report of the Committee on Interstate Commerce upon this railroad-valuation bill. As a member of that committee I have for years favored such legislation and have frequently introduced resolutions relating to a legislative program and providing for such valuation. So far as I have been individually concerned I have been disposed to submit the task of ascertaining that valuation and the principles which should control it to the Interstate Commerce Commission itself, feeling assured that they would avail themselves of the services of economists and competent experts, and would present in their report every element of value upon which a court would be called upon to act.

The Senator from Wisconsin [Mr. LA FOLLETTE], with that great care and precision with which he always moves in matters relating to economic legislation, has insisted that we should in the bill itself present the principles of valuation and define and secure the ascertainment of the different elements of value, every element of value, which could possibly be considered by a court in determining the question of fair valuation, and this bill I think is very accurately framed along that line.

The testimony and aid of valuable experts—Prof. Bemis and Prof. Commons, of the University of Wisconsin—have been utilized in this work. I think that this bill is a piece of legislation that can be regarded as fairly perfect. I believe that it will serve a great purpose and that it will practically end in the future the contentions that have been going on between the railroads and the public. I believe that the system of regulation which we inaugurated over 20 years ago regarding railroads, if pursued with reference to the trusts, would by this time have practically settled the trust question as we have settled the railroad question.

The creation of a great regulating commission, acting as the servant of Congress upon these important public questions affecting the regulation of interstate commerce, would have resulted most satisfactorily in the adjustment of the trust question; and I hope that the legislation we have perfected, legislation which we have gradually introduced regarding the rail-

road question, will be introduced regarding the control of the great trust organizations of the country.

I regard with great satisfaction the outcome of the labors of the committee, and view it as a most satisfactory step in a fair solution of the relations between the public and the railroads.

Mr. POMERENE. On page 11, line 1, after the word "thereto," I move to amend by inserting the words "and substantially affecting said value."

The PRESIDENT pro tempore. The amendment proposed by the Senator from Ohio will be stated.

The SECRETARY. On page 11, line 1, after the word "thereto," it is proposed to insert the words "and substantially affecting said value."

The amendment was agreed to.

Mr. GRONNA. Mr. President, I had intended to make a few observations on some of the provisions of the bill; but I am anxious to have it pass this evening. I have the utmost confidence in the members of the committee. I know that the Senator from Wisconsin [Mr. LA FOLLETTE] has given this question a great deal of study; that he has made it a part of his life work. So I shall not detain the Senate or delay the passage of the bill by further remarks at this time. I shall vote for it.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

The title was amended so as to read, "An act to amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and all acts amendatory thereof by providing for a valuation of the several classes of property of carriers subject thereto and securing information concerning their stocks, bonds, and other securities."

#### ISSUANCE OF INTERLOCUTORY INJUNCTIONS.

Mr. ROOT. From the Committee on the Judiciary I report back favorably with amendments the bill (S. 8439) restricting the issuance of interlocutory injunctions to suspend the enforcement of the statute of a State or of an order made by an administrative board or commission created by and acting under the statute of a State, and I submit a report (No. 1309) thereon. I call the attention of the Senator from South Dakota [Mr. CRAWFORD] to the bill.

Mr. NELSON. I ask unanimous consent for the present consideration of the bill.

The PRESIDENT pro tempore. The Senator from Minnesota asks unanimous consent for the present consideration of the bill.

Mr. NELSON. It is a very short bill and will take but a moment.

The PRESIDENT pro tempore. The bill will be read for the information of the Senate.

The Secretary proceeded to read the bill, which had been reported from the Committee on the Judiciary with an amendment to strike out all after the enacting clause and to insert a substitute.

Mr. WILLIAMS. Mr. President, we have been here ever since 10 o'clock this morning and it is now half past seven. I move that the Senate adjourn; and if the Senate does not adjourn I shall ask for a quorum.

Mr. GAMBLE. Mr. President—

The PRESIDENT pro tempore. The Senator from Mississippi moves that the Senate adjourn.

The motion was agreed to; and (at 7 o'clock and 30 minutes p. m.) the Senate adjourned until to-morrow, Tuesday, February 25, 1913, at 10 o'clock a. m.

#### HOUSE OF REPRESENTATIVES.

Monday, February 24, 1913.

The House met at 10.30 o'clock a. m.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

O God our Father, our life, our salvation; whose favor follows the faithful to uphold, sustain, and guide them in every good work. May we be faithful in the work Thou hast given us to do that we may reach the highest and best results and thus add somewhat to the progress of the world, and Thine be the praise through Jesus Christ our Lord. Amen.

The Journal of the proceedings of yesterday, Sunday, February 23, 1913, was read and approved.

#### DISTRICT OF COLUMBIA BUSINESS.

The SPEAKER. To-day is District day under the rule, and the Chair recognizes the gentleman from Kentucky [Mr. JOHNSON].